

No. 15659

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United States  
Court of Appeals  
for the Ninth Circuit

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OCEANIC STEAMSHIP COMPANY, a Corporation,

Appellant,

VS.

GUY W. SWANSON, INDEPENDENT STEVEDORE COMPANY, a Corporation, and PORTLAND STEVEDORING COMPANY, a Corporation,

Appellees.

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Transcript of Record

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Appeal from the United States District Court for the  
District of Oregon

FILED

SEP 13 1957



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States District Court  
for the District of Oregon

Civil No. 8074

GUY W. SWANSON,

Plaintiff,

vs.

MATSON NAVIGATION COMPANY and  
OCEANIC STEAMSHIP COMPANY,

Defendants and Third Party Plaintiffs,

vs.

INDEPENDENT STEVEDORE COMPANY,  
a Corporation, and PORTLAND STEVE-  
DORING COMPANY, a Corporation,

Third Party Defendants.

### PRETRIAL ORDER

This cause came on for pretrial before the Honorable Gus J. Solomon, Judge of the above-entitled Court, on the 29th day of October, 1956. Plaintiff appeared by Howard K. Beebe, Esq., of Maguire, Shields, Morrison & Bailey, his attorneys. Defendants and third party plaintiffs appeared by Kenneth E. Roberts, Esq., of Mautz, Souther, Spaulding, Denecke & Kinsey, their attorneys. Third party defendants appeared by Erskine Wood, Esq., of Wood, Matthiessen, Wood & Tatum, their attorneys.

## Agreed Statement of Facts

## I.

That Matson Navigation Company has been and now is a corporation duly organized and existing under and by virtue of the laws of the State of California.

## II.

That Oceanic Steamship Company has been and now is a corporation duly organized and existing under and by virtue of the laws of the State of California.

## III.

That Independent Stevedore Company was and now is a corporation organized and existing under and by virtue of the laws of the State of Oregon.

## IV.

That Portland Stevedoring Company was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon.

## V.

That this action is a civil nature and the matter and amount in dispute herein exceeds the sum of \$3,000.00 exclusive of interest and costs.

## VI.

That the plaintiff is a resident and inhabitant of the State of Oregon.

## VII.

That plaintiff elected to pursue a remedy against a third party pursuant to the provisions of the

Longshoremen & Harborworkers' Act of the United States and has filed with the United States Department of Labor, Bureau of Employees' Compensation, a formal notice of election to sue.

### VIII.

That the plaintiff was employed as a longshoreman by the Portland Stevedoring Company and that on or about the 9th day of February, 1955, he was working on the SS Ventura, a vessel owned and operated by the Oceanic Steamship Company, and that while working on the said vessel he sustained certain personal injuries.

### IX.

That shortly before the 9th day of February, 1955, the S.S. Ventura was loaded by the Independent Stevedore Company at Yaquina Bay, Oregon.

### X.

That pursuant to contract the Independent Stevedore Company loaded the vessel at Yaquina Bay and the Portland Stevedoring Company loaded the vessel at Portland.

### Contentions of the Parties

Plaintiff's Contentions as to the Issues of Liability

Plaintiff contends and the defendants deny that:

### I.

On or about February 9, 1955, the SS Ventura and its appliances were in an unseaworthy condi-

tion in that the metal hatch covers were bent, twisted and dished so that they would slip, roll and turn when stepped upon and that the said unseaworthiness of said vessel was the proximate cause of the injuries and damages sustained by the plaintiff.

## II.

At said time and place the defendants were negligent and failed to furnish plaintiff a safe place in which to work in that:

(a) The defendants maintained the hatch covers upon said ship in a bent, twisted, dished and unsafe condition;

(b) Said ship and its appliances were maintained in an unseaworthy condition by the defendants in that said metal hatch covers were bent, dished and twisted so that they would slip, roll and turn when stepped upon;

(c) Defendants were negligent in failing to provide and equip said ship with safe and stable hatch covers before having longshoremen, and particularly the plaintiff, work about and upon said hatch.

## III.

While plaintiff was working on the said vessel and while in the scope and course of his employment he was caused to fall, as a direct and proximate result of the negligence of the defendants as aforesaid and as a direct and proximate result of the unseaworthiness of said vessel, as aforesaid, into the hold of the said vessel and as a direct and

proximate result thereof, plaintiff sustained the following injuries which are permanent and progressive and which have caused plaintiff great physical and mental pain and suffering and anguish, and which will continue to cause him to so suffer for the remainder of his life:

(a) severe and extensive cerebral contusions and concussions with marked cerebral edema and long-lasting coma which required surgery to the brain and skull and which resulted in unbalance and in-co-ordination of the skeleton muscles of plaintiff's back and legs;

(b) severe strain and sprain of the muscles, tendons, ligaments, bones, tissues and joints of the spine and neck;

(c) severe aggravation of pre-existing arthritis of the spine;

(d) traumatic myofibrosis;

(e) traumatic coccygodynia.

#### IV.

That as a further direct and proximate result of the said negligence of defendants and the unseaworthiness of said vessel, as aforesaid, plaintiff's earning capacity has been permanently impaired.

#### V.

As a further direct and proximate result of said unseaworthiness and said negligence of defendants, as aforesaid, plaintiff has been totally disabled from the date of said accident and has lost wages up to the time of trial in the sum of \$10,000.

## VI.

As a further direct and proximate result of said unseaworthiness and said negligence of the defendants, plaintiff has incurred reasonable medical and hospital expenses in the sum of \$2,053.60, and will require medical attention in the future.

## VII.

As a direct and proximate result of said unseaworthiness and said negligence as aforesaid, plaintiff has sustained special damages in the amount of \$. . . . . and general damages in the sum of \$150,000.00.

## VIII.

Plaintiff is entitled to a jury trial of all issues of fact herein.

## IX.

The third party defendants admit that the hatch covers were bent, twisted or dished, but neither admit nor deny that this constituted unseaworthiness, leaving that to the proofs and decision of the Court; deny that plaintiff is entitled to a jury trial; deny knowledge or information sufficient to form a belief as to the remainder of plaintiff's contentions.

Defendant's Contentions on the Issue of Liability  
Oceanic Steamship Company contends and the plaintiff denies:

## I.

That if plaintiff sustained any injuries such as are alleged in his complaint, such injuries were



caused in whole or in part by plaintiff's own negligence in the following particulars:

(a) Plaintiff failed to keep a proper lookout for his own safety and that any threat to his safety was open and apparent.

(b) That plaintiff continued to work on the hatches of the vessel without first ascertaining that the hatches on which he was working were securely placed.

### Third Party Defendants' Contentions on the Issue of Liability

Third party Defendants contend and the plaintiff denies:

#### I.

That the plaintiff was guilty of negligence, which was the sole and proximate cause of his injuries in the following particulars:

(a) Plaintiff failed to keep a proper lookout for his own safety.

(b) Plaintiff worked on hatch boards of the vessel without first ascertaining that the hatch board on which he was working was securely placed.

### Defendant's Contentions of the Issues of Indemnity Over Against Independent Stevedore Company

Defendant Oceanic Steamship Company contends and the third party defendant Independent Stevedore Company denies:

## I.

That if defendant is held to be liable to the plaintiff by reason of any of the matters alleged in plaintiff's contentions that any and all such liability was caused by the fault and sole active and primary negligence of the third party defendant Independent Stevedore Company in the following particulars:

(a) In replacing the cross beams of #3 lower 'tween deck hatch so that the afterbeam was not fitted into its slot but protruded above the slot.

(b) In placing the fore beam of #3 hatch in the afterbeam position.

(c) In handling and using the hatch boards in such a manner that the same became unseaworthy if the hatch boards were in fact unseaworthy as alleged by the plaintiff.

## II.

That the negligence set forth in paragraph 1 above constituted a breach of duty owed by the third party defendant Independent Stevedore Company, to the Oceanic Steamship Company to perform the loading in a workmanlike manner and to notify the Oceanic Steamship Company or the plaintiff on behalf of the Oceanic Steamship Company of any defects or dangers inherent therein.

## III.

In that any and all liability, if any, in the within cause should be borne by the third party defendant



Independent Stevedore Company and in the event defendant Oceanic Steamship Company is held liable to the plaintiff in respect to any of the matters set forth in plaintiff's contentions, Oceanic Steamship Company has a right over against Independent Stevedore Company for full and complete indemnity, and if plaintiff is entitled to a judgment, said judgment shall be entered against Independent Stevedore Company and that the plaintiff's complaint against the Oceanic Steamship Company should be dismissed with costs to the Oceanic Steamship Company.

Defendant's Contentions on the Issue of Indemnity  
Over Against Portland Stevedoring Company

Defendant Oceanic Steamship Company contends and the third party defendant Portland Stevedoring Company denies:

I.

That if the defendant Oceanic Steamship Company is held to be liable to plaintiff by reason of any of the matters alleged in plaintiff's contentions that any and all of such liability was caused by the fault and sole act of and primary negligence of the Portland Stevedoring Company in the following particulars:

(a) In allowing and permitting its stevedores, including the plaintiff, to work on the hatch boards knowing that the said hatch boards were unseaworthy, if in fact the said boards were unseaworthy as alleged by plaintiff.

## II.

That the negligence set forth in paragraph I above constituted a breach of duty owed by the Portland Stevedoring Company to the Oceanic Steamship Company to perform the work of loading the vessel in a workmanlike manner and to notify the Oceanic Steamship Company or the plaintiff on behalf of the Oceanic Steamship Company of any defects or dangers inherent in the loading of the vessel and in particular as to any defects or unseaworthy condition of the hatch boards.

## III.

In that any and all liability, if any, in the within cause should be borne by the Portland Stevedoring Company and that in the event the defendant, Oceanic Steamship Company, is held liable to the plaintiff in respect to any of the matters set forth in plaintiff's contentions Oceanic Steamship Company has a right over against Portland Stevedoring Company for full and complete indemnity, and that if plaintiff is entitled to a judgment such judgment should be entered against Portland Stevedoring Company and the plaintiff's complaint against the Oceanic Steamship Company should be dismissed with costs to the Oceanic Steamship Company.

Third Party Defendant Independent Stevedore Company's Contentions on the Issues of Indemnity Over.

Third party defendant Independent Stevedore Company contends, and Oceanic Steamship Company denies, that if the hatch beams in No. 3 'tween deck hatch were wrongly placed as contended by the Steamship Company, that was not a proximate cause of the accident; for it was the duty of the Steamship Company to remedy that alleged defect before turning the ship over to the Portland Stevedoring Company for loading; and that in any event, if said cross beams were wrongly placed, as claimed by the Steamship Company, which Independent Stevedore Company denies, such wrong placing was immaterial and not a proximate cause of plaintiff's injury since the Portland Stevedoring Company took the beams out and replaced them properly prior to Swanson's accident, and that there is no right to indemnity from this third party defendant.

Third Party Defendant Portland Stevedoring Company's Contentions on the Issues of Indemnity Over.

Portland Stevedoring Company contends and the Oceanic Steamship Company denies:

I.

That the hatch covers at No. 3 'tween deck hatch of the Ventura were warped, twisted, dished or bent and would not fit in place and that this was the

proximate cause of Swanson's accident (unless Swanson's own negligence was the proximate cause) for which this third party defendant is not liable, and that there is no right to indemnity from this third party defendant.

### Issues on the Question of Liability

#### I. Question of Fact:

Was the S.S. Ventura unseaworthy, particularly relating to the condition of the hatch covers as contended by plaintiff?

Was the plaintiff negligent in any of the respects contended by defendants and third party defendants?

If the S.S. Ventura was unseaworthy in the condition of the hatch covers as contended by plaintiff, did such unseaworthiness proximately cause the plaintiff to fall into the lower hold of the vessel with resulting injuries?

What is the extent of plaintiff's injuries and what are his money damages?

What amount of wages did plaintiff lose up to the time of trial?

Was the plaintiff guilty of negligence in one or more of the respects contended by defendant and third party defendants which proximately contributed to the accident, and if so to what extent?

## II. Question of Law:

Is plaintiff entitled to a trial by jury in view of the fact that he did not file a request for a jury trial within ten days from the last pleading?

Is the defendant Oceanic Steamship Company legally responsible to plaintiff for damages resulting to him from the accident?

Was plaintiff himself guilty of negligence which proximately contributed to the accident and his resulting injuries and if so to what extent does it deprive him of his right to damages?

## On Question of Indemnity

### I. Question of Fact:

(a) Did the third party defendant, Independent Stevedore Company, replace the cross beams of No. 3 lower 'tween deck hatch so that the afterbeam was not fitted into its slot but protruded above the slot, and did the Independent Stevedore Company place the forebeam of No. 3 hatch in the afterbeam position and handle and use the hatch boards in such a manner that the same became unseaworthy if the hatch boards were in fact unseaworthy as alleged by plaintiff?

(b) Did the third party defendant, Portland Stevedoring Company, fail to prevent the stevedore gangs and longshoremen, including the plaintiff, from working on the hatch boards when the said hatch boards were unseaworthy if in fact the said

hatch boards were unseaworthy as alleged by the plaintiff?

(c) Did either third party defendant fail to notify the Oceanic Steamship Company or the plaintiff on behalf of the Oceanic Steamship Company of any faults or inherent danger on the S.S. Ventura and in particular relating to the hatch boards and cross beams?

(d) Were such acts of the third party defendant a proximate cause of plaintiff's injuries?

## II. Question of Law:

If the Oceanic Steamship Company is held to be liable to the plaintiff because of the unseaworthy condition of the hatch boards, would the Oceanic Steamship Company be entitled to indemnity over against the Independent Stevedore Company and/or the Portland Stevedoring Company, or both of them?

### Exhibits

At the pretrial the following exhibits were admitted and may be introduced without further identification.

### Plaintiff's Exhibits

1. Deposition of Clarence Uskoski, June 29, 1955.
2. Drawing of the vessel S.S. Ventura by Clarence Uskoski as a part of said deposition.
3. Picture showing vertical view of bent hatch cover with a man holding a straight board along-



side of the hatch cover to show the extent of which the hatch cover was bent.

4. Picture showing a vertical view of the bent hatch cover.

5. Picture showing horizontal view of the bent hatch cover.

6. Payroll records of Portland Stevedoring Company (and other employers) showing earnings of plaintiff during 1954 and 1953.

7. Deposition of Guy W. Swanson taken in behalf of the defendants, June 4, 1955.

8. Hospital records of St. Vincent's Hospital concerning the plaintiff while he was confined in the hospital.

9. X-rays from hospital.

10. Reports of Edward K. Kloos, M.D.

11. Reports of Howard Cherry, M.D.

12. July 20, 1955, report of E. G. Chuinard, M.D., to WBM.

13. Dr. Chuinard's X-rays.

14. Report of John Raaf, M.D., to WMB, June 15, 1955.

15. Dr. Raaf's X-rays.

16. Reserve for marine architect's drawing of hatches.

17. Statement of J. V. Lundstrom.

18. United States Life Tables, 1949-1951.

19. Dr. Berg's X-rays.

20. Dr. Berg's report.

## Defendants' Exhibits

1. Photographs of hatch boards.
2. Deposition of Clarence Uskoski.
3. Statement of J. V. Lundstrom.
4. Deposition of Guy W. Swanson.
5. Contract between defendant and third party defendants.

\* \* \*

## Third Party Defendant

## Independent Stevedore Company's Exhibits

1. Four photographs of hatch boards.
2. Deposition of Swanson.
3. Deposition of Uskoski.
4. Statement of Lundstrom.

\* \* \*

## Third Party Defendant

## Portland Stevedoring Company's Exhibits

1. Four photographs of hatch boards.
2. Deposition of Swanson.
3. Deposition of Uskoski.
4. Statement of Lundstrom.

\* \* \*

The foregoing is a pretrial order agreed upon between counsel and the Court, and, may be amended at the trial by consent of all parties or to prevent manifest injustice or at the discretion of the Court, and that said pretrial order supersedes the pleadings which now pass out of the case.



Dated at Portland, Oregon, this 5th day of February, 1957.

/s/ CLAUDE McCOLLOCH,  
Judge.

The foregoing form of pretrial order is hereby approved:

/s/ HOWARD K. BEEBE,  
Attorney for Plaintiff.

/s/ KENNETH E. ROBERTS,  
Attorney for Defendants and  
Third Party Plaintiffs.

/s/ ERSKINE WOOD,  
Attorney for Third Party  
Defendants.

Lodged November 1, 1956.

[Endorsed]: Filed February 5, 1957.

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[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause having come on regularly for trial before the undersigned Judge of the above-entitled court, and the parties having introduced evidence on the merits of the controversy and all parties having rested and the court having heard arguments of counsel and having considered the written briefs submitted, the court does hereby

make the following findings of fact and conclusions of law.

### Findings of Fact

#### I.

Matson Navigation Company has been and now is a corporation duly organized and existing under and by virtue of the laws of the State of California.

#### II.

Oceanic Steamship Company has been and now is a corporation duly organized and existing under and by virtue of the laws of the State of California.

#### III.

Plaintiff is a resident and inhabitant of the State of Oregon.

#### IV.

This action is one of a civil nature and the matter and amount in dispute herein exceeds the sum of \$3,000 exclusive of interest and costs.

#### V.

Plaintiff elected to pursue a remedy against a third party pursuant to the provisions of the Longshoremen & Harborworkers' Act of the United States and has filed with the United States Department of Labor, Bureau of Employees' Compensation, a formal notice of election to sue.

#### VI.

Plaintiff was employed as a longshoreman by the Portland Stevedoring Company and on or about

the 9th day of February, 1955, while he was working on the S.S. Ventura and in the course and scope of his employment, he sustained injuries as hereinafter more specifically described when he fell into the hold of the S.S. Ventura, a vessel which was owned and operated by the Oceanic Steamship Company.

### VII.

On or about February 9, 1955, the S.S. Ventura and its appliances were unseaworthy in that the metal hatch covers were bent, twisted and dished so that they would slip, roll and turn when stepped upon and said unseaworthiness was the direct and proximate cause of plaintiff's fall into the hold of said vessel and was the proximate cause of the injuries and damages sustained by plaintiff as hereinafter specifically found.

### VIII.

At said time and place the defendant, Oceanic Steamship Company, was negligent and failed to furnish plaintiff a safe place to work in that:

(a) The said defendant maintained the hatch covers upon said ship in a bent, twisted, dished and unsafe condition;

(b) Said ship and its appliances were maintained in an unseaworthy condition by the said defendant in that said metal hatch covers were bent, dished and twisted so that they would slip, roll and turn when stepped upon.

(c) Said defendant was negligent in failing to provide and equip said ship with safe and stable hatch covers before having longshoremen, and particularly the plaintiff, work about and upon said hatch.

#### IX.

As a direct and proximate result of the unseaworthiness of said vessel and of the negligence of the defendant, Oceanic Steamship Company, as aforesaid, plaintiff was caused to fall into the hold of said ship when he stepped upon one of said defective hatch covers while engaged in the course and scope of his employment.

#### X.

Plaintiff was not guilty of contributory negligence.

#### XI.

As a direct and proximate result of the unseaworthiness of said vessel and of the negligence of the defendant, Oceanic Steamship Company, plaintiff sustained the following injuries:

(a) A severe brain injury consisting of severe and extensive, diffused cerebral contusions, with hemorrhages and concussion deep in the substance of the brain with marked cerebral edema and long lasting coma and semi-coma which required the plaintiff to undergo brain surgery on two occasions and which has caused a severe impairment of plaintiff's mental processes and a morbid personality change. Said injury is permanent and will not improve.

(b) A severe spraining and straining of the muscles, tendons and ligaments of plaintiff's spine.

Said injuries have caused the plaintiff to suffer excruciating physical and mental pain, suffering, distress, anxiety and anguish. Said permanent brain injury will cause the plaintiff to suffer severe physical and mental, suffering, distress, loss of memory, anxiety and anguish for the balance of his life.

Prior to said accident and injury plaintiff was an able-bodied man, 53 years of age, who was capable of and was earning in excess of \$5,000 per year as a longshoreman. He is untrained and unqualified for any kind of work other than physical labor and said brain injury renders it impossible for him to train himself for any type of sedentary occupation. Plaintiff is permanently and totally disabled from performing any kind of gainful work and his earning capacity has been totally destroyed.

Plaintiff, at the time of trial, had a life expectancy of between 19 and 20 years.

I find that plaintiff has been generally damaged in the sum of \$100,000.00.

### XIII.

As a further direct and proximate result of the unseaworthiness of said vessel and of the negligence of the defendant, Oceanic Steamship Company, as aforesaid, the plaintiff was required to and did incur reasonable hospital and medical expenses in the sum of \$2,053.60 and has lost wages from the

date of the accident to the time of the trial in the sum of \$10,000 all to his special damage in the sum of \$12,053.60.

### Conclusions of Law

#### I.

The Court has jurisdiction of the parties and of the subject matter.

#### II.

Plaintiff is entitled to a judgment against the defendant, Oceanic Steamship Company, in the sum of \$12,053.60 as special damages and for the further sum of \$100,000.00 as his general damages, as well as his costs and disbursements herein incurred.

Dated this 14th day of March, 1957.

/s/ CLAUDE McCOLLOCH,  
United States District Judge.

Service of copy acknowledged.

[Endorsed]: Filed March 14, 1957.

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[Title of District Court and Cause.]

### PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF OCEANIC STEAMSHIP COMPANY FOR INDEMNITY OVER

The above-entitled cause having duly come on for trial before the undersigned judge of the above-



entitled Court, plaintiff appearing in person and by his attorneys, William H. Morrison and Howard K. Beebe, and the defendants being represented by their attorneys, Kenneth E. Roberts (Mautz, Souther, Spaulding, Denecke & Kinsey), and the third party defendants being represented by their attorneys, Erskine Wood (Wood, Matthiessen, Wood & Tatum), and the Court having heard evidence from their respective parties and their witnesses and having heard argument of counsel and having considered briefs submitted by counsel and being otherwise fully advised in the premises does now make and enter the following findings of fact and conclusions of law on the issue of indemnity over:

### Findings of Fact

#### I.

That Oceanic Steamship Company was and now is a corporation duly organized and existing under and by virtue of the laws of the State of California and was and now is the owner and operator of the Vessel S.S. Ventura.

#### II.

That heretofore on the 14th day of March, 1957, the within-entitled Court signed plaintiff's proposed findings of fact and conclusions of law awarding plaintiff \$100,000.00 general damages plus \$12,-053.60 special damages plus costs and disbursements against the defendant Oceanic Steamship Company, and that thereafter, on the . . . . day of March, 1957, and based on said findings of fact and conclusions

of law, judgment was entered against the defendant Oceanic Steamship Company in the sum of \$112,053.60 in favor of plaintiff, together with his costs and disbursements.

### III.

That the Court found in plaintiff's action against Oceanic Steamship Company that the Steamship Company had breached its nondelegable duty to furnish a seaworthy vessel and that it was negligent in failing to provide the plaintiff with a safe place to work; that the said acts were of passive negligence.

### IV.

That the Independent Stevedore Company was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon and that it, a few days prior to the 9th day of February, 1955, and pursuant to contract, loaded the S.S. Ventura at Yaquina Bay, Oregon.

### V.

That the Portland Stevedoring Company was and now is a corporation organized and existing under and by virtue of the laws of the State of Oregon, and that on the 9th day of February, 1955, pursuant to contract, loaded the S.S. Ventura at Portland, Oregon.

### VI.

That on the 9th day of February, 1955, plaintiff was a longshoreman employed by the Portland Stevedoring Company and that he was and now is



a resident and inhabitant of the State of Oregon, and that this action is of a civil nature and that the amount in dispute exceeds the sum of \$3,000.00 exclusive of interest and costs.

### VII.

That when the vessel was loaded by Independent Stevedore Company at Yaquina Bay, Oregon, the said Stevedore Company was negligent in replacing the No. 7 strongback of No. 3 lower 'tween deck hatch so that it protruded approximately four inches above its housing slots and that such negligence was a substantial factor in bringing about the harm to the plaintiff, and that Independent Stevedore Company was an independent contractor having sole and complete charge, control and supervision of the work, including the placement of the strongbacks and hatch covers.

### VIII.

That the contract between Independent Stevedoring Company and Oceanic provided in part:

“The above rates will include the following services of the contractor:

“(a) The supplying of all necessary stevedoring labor, including winchmen, hatch tenders, and foremen, and all stevedoring direction and supervision requisite or necessary for the proper and efficient conduct and control of the work as well as any equipment and labor needed in switching cars, etc.

“(c) The removal and replacing of hatch covers, beams and strongbacks at hatches where any stevedoring work is conducted; and the rigging and unrigging of booms, guys, falls, etc., to be used in the work (initial opening and final closing).

“(e) The laying, removing and other handling of all dunnage used or intended to be used in connection with the cargo.

“Responsibilities of the Parties:

“All stevedoring work and supervision, and all other services of the contract or under this contract shall be under the sole direction and control of the contractor, providing, however, that the operator and the Master or officer in charge of the ship shall always have the right to reject the work if, in the opinion of the Master or Officer in charge of the ship, cargo is so stowed or secured as to make the ship unseaworthy or unfit for her contemplated voyage, or as to subject the crew or any of the cargo to unnecessary risk or danger. The contractor will be responsible for loss or damage to the ship, its equipment and the cargo, through or as a result of its negligence \* \* \* The contractor will carry insurance against his liability for damage caused through his fault or negligence to the property of others, such insurance to be in the amount of not less than \$250,000.00 each accident.”

## IX.

That after the vessel arrived at Portland, Oregon, on the 9th day of February, 1955, the stevedore

gang, including the plaintiff, and all employed by Portland Stevedoring Company went to work on No. 3 hold lower 'tween deck and it was anticipated that cargo was to be stowed in the wings of the said deck.

X.

That the contract between Portland Stevedoring Company and Oceanic Steamship Company provided in part:

“The stevedore hereby accepts such engagement and agrees to do and perform all the work required by it to be done or performed under this contract in an economical and efficient manner and in accordance with the best operating practices, to exercise due diligence to protect and safeguard the interests of the steamship company in all respects, and to avoid any delay, loss or damage whatsoever to the steamship company.

“Part 2—Duties of the Stevedore—The stevedore shall (a) At all times while the vessel is being worked provide not less than one general supervisor in direct charge of the work on each vessel; load and discharge cargoes, do and perform all the duties and functions usually and customarily done and performed by a stevedore; furnish all labor of every nature and description and all gear, mechanical or other equipment (except as provided in paragraph 5 of this Part 2) necessary for the most efficient loading or discharging of the vessel, and transport the same to and from the ves-

sel or the pier or terminal where the work is to be performed \* \* \*

“General Labor and other Provisions:

“4-b. The stevedore recognizes the relation of trust and confidence established between it and the steamship company by the contract and agrees to furnish his best skill and judgment in planning, supervising and performing the work, to make every effort to complete the work in the shortest time practicable and to co-operate fully with the steamship company in furthering the latter's interest. The stevedore further agrees to furnish efficient business administration and superintendence in performing the work.

“4-c. Whenever any actual or potential labor dispute is delaying or threatening to delay the timely and efficient performance of the work the stevedore shall immediately give notice thereof to the steamship company. Such notice shall include all relevant information with respect to such dispute.

“7. As between the parties hereto stevedore shall be responsible for any and all loss, damage or injury (including death), to persons, cargo, vessels, stores, apparel or equipment \* \* \* or other property or thing arising through the negligence or fault of the stevedore, its employees, gear or equipment and the steamship company shall be responsible for any and all such loss, damage or injury

arising through the negligence or fault of the steamship company, its employees, gear or equipment.”

## XI.

That the longshore gang, including the plaintiff, refused to work on the hatch covers because they were bent, twisted and dished and would tend to slip, roll and turn when stepped upon and further that the No. 7 strongback was unsafe in that it was four inches out of its slot and raised the hatch covers at the after end of the hatch opening; that a conference was had in the hold by the longshore gang, including the plaintiff, and the gang boss and walking boss, and it was decided by the gang, the plaintiff and the gang boss and walking boss that before commencing to work, the hatch covers should be covered over with lumber and the walking boss left the hold to secure the lumber to cover the hatch covers; that the gang boss and the longshore gang, including the plaintiff, thereafter decided to switch the No. 7 strongback with the No. 1 strongback and this was done by uncovering two sections of the hatch covers at the fore end of the hatch opening and two sections of the hatch covers at the after end of the opening; that the said Portland Stevedoring Company was negligent in failing to cover the hatch covers with lumber before allowing the longshore gang, including the plaintiff, to work on them, which negligence was an active concurrent proximate cause of the accident.

## XII.

That after the strongbacks had been switched the



longshore gang commenced to cover up again preparatory to laying lumber on the hatch covers and the plaintiff while in the process of replacing the hatch covers at the after end of the hatch opening stepped onto a hatch cover and he and the hatch cover were precipitated into the lower hold of the vessel; that after the accident and after all the hatch covers had been replaced the longshore gang covered the metal hatch covers with lumber and worked on the lumber surface in stowing cargo in the wings of the hold.

### XIII.

That the Portland Stevedoring Company in Portland was engaged in the loading operation of the vessel and was an independent contractor having sole and complete charge, control and supervision of the work including the uncovering of the hatch opening, the switching of the strongbacks and the recovering of the hatch openings.

### XIV.

That the Portland Stevedoring Company, through its supervisory agents and employees, namely, the gang boss and walking boss, had knowledge of the condition of the hatch covers prior to the injury of the plaintiff and with such knowledge had ordered and allowed the plaintiff to work on the hatch covers without warning him of the known condition of the hatch covers or exercising due care to remedy the said known condition of the hatch covers, all of which negligence was active negligence and a proximate cause of plaintiff's injury.

XV.

That the negligence of the Independent Stevedore Company and Portland Stevedoring Company, as aforesaid, was the active, concurrent and proximate cause of plaintiff's fall into the lower hold and subsequent injury.

XVI.

That the said acts of the third party defendants constituted a breach of the said third party defendants consensual obligation owing to Oceanic Steamship Company to perform the work of loading the S.S. Ventura and all work incidental thereto in a reasonably safe and proper manner.

Conclusions of Law

I.

The Court has jurisdiction of Oceanic Steamship Company and the third party defendants and of the subject matter.

II.

That the negligence of Oceanic Steamship Company was passive and that the negligence of the third party defendants and each of them was the active, concurrent and proximate cause of plaintiff's injury.

III.

That the third party defendants breached their consensual obligation owing to Oceanic Steamship Company to perform the work of loading and all work incidental thereto in a reasonably workmanlike and safe manner.

## IV.

That Oceanic Steamship Company is entitled to full indemnity against the third party defendants and each of them in the sum of \$112,052.60 together with costs.

Dated this .... day of ....., 1957.

.....,

United States District Judge.

Affidavit of Service by Mail attached.

Lodged March 22, 1957.

---

[Title of District Court and Cause.]

## PROPOSED JUDGMENT

This cause having come on for trial before the undersigned Judge of the above-entitled Court, and the Court having entered judgment in favor of the plaintiff and against the defendant Oceanic Steamship Company and Oceanic Steamship Company having sought full and complete indemnity from the third party defendants and the Court having heard the evidence of the respective parties and their witnesses and having heard argument of counsel and being otherwise fully advised in the premises, and having heretofore made and entered its findings of fact and conclusions of law on the issues of indemnity over, it is now

Considered, Ordered, Adjudged and Decreed that Oceanic Steamship Company be and is hereby



awarded full indemnity against the third party defendants and each of them in the sum of \$112,053.60 together with its costs and disbursements incurred herein.

Dated this . . . . day of . . . . ., 1957.

.....,

United States District Judge.

Affidavit of Service by Mail attached.

Lodged March 22, 1957.

---

[Title of District Court and Cause.]

### THIRD-PARTY DEFENDANTS' FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause having come on regularly for trial before the undersigned Judge of the above-entitled Court, and the plaintiff and defendants having introduced evidence, and the third-party defendants having participated in the trial, and all parties having rested, and the Court having heard arguments of counsel and having considered the written briefs submitted, and the Court having made its findings of fact and conclusions of law, and entered judgment on the issues between plaintiff and defendants, now, on the issues between the third-party plaintiffs and the third-party defendants, the Court makes the following findings of fact and conclusions of law:

## Findings of Fact

## I.

Matson Navigation Company at all times pertinent to this proceeding was and now is a corporation duly organized and existing under the laws of the State of California.

## II.

Oceanic Steamship Company at all times pertinent to this proceeding was and now is a corporation duly organized and existing under the laws of the State of California.

## III.

Plaintiff is a resident and inhabitant of the State of Oregon.

## IV.

The third-party defendants were at all times and now are corporations organized and existing under the laws of the State of Oregon.

## V.

In this proceeding plaintiff has recovered a judgment against defendant Oceanic Steamship Company in the sum of \$112,053.60, together with his costs and disbursements, and said third-party plaintiff seeks recovery of this sum from one or both of said third-party defendants by way of indemnity.

## VI.

While the steamship *Ventura*, owned by defendant Oceanic Steamship Company, was at Yaquina

Bay, Oregon, third-party defendant Independent Stevedore Company, as a stevedore contractor, covered up No. 3 lower 'tween deck hatch, and in doing so left the No. 7 strongback protruding slightly above the level of the other strongbacks because it would not sink completely into its sockets, with the result that the ends of the hatch covers, where they rested on this strongback, were slightly elevated.

#### VII.

When the vessel, a short time after, arrived at Portland, third-party defendant Portland Stevedoring Company, as a stevedore contractor, was going to load lumber in this No. 3 'tween deck, which necessitated the longshoremen walking over and working upon this hatch.

#### VIII.

The hatch covers for this hatch were of metal and were warped, dished, bent, defective and unseaworthy. In view of this condition the hatch boss and longshoremen of Portland Stevedoring Company determined to "floor off" the hatch by leaving the hatch covers in place, but laying lumber over them as a floor, covering the whole hatch, to make it a safer place upon which to work, and to facilitate this, and make the whole thing level, they removed the protruding No. 7 strongback from its sockets and exchanged it with No. 1 strongback. As a result of this exchange these two strongbacks were firmly and completely sunk into their sockets, and all the strongbacks were now even, alike and level.

## IX.

The longshoremen then, preparatory to flooring off the hatch with lumber, proceeded to replace those hatch covers, which it had been necessary to remove, in order to exchange the two strongbacks. This work of replacing the hatch covers was merely the normal, routine work of covering up the hatch by placing the hatch covers on the strongbacks, which were now perfectly in place. It was while doing this that plaintiff Swanson, because of the aforesaid defective and unseaworthy condition of the hatch covers, and without any fault on the part of third-party defendants, fell into the hold and was injured.

## X.

The plan to floor off the hatch with lumber had been concurred in by the ship's supercargo, who cooperated with the hatch boss of Portland Stevedoring Company in furnishing lumber for that purpose, and said plan was later carried out.

## XI.

Third-party defendant Independent Stevedore Company was not negligent and did not breach its stevedoring contract because of the manner in which it set the strongbacks and covered up the hatch at Yaquina Bay, or at all, and its acts in that regard were not a proximate cause of plaintiff's injuries, nor can it be supposed that they were within the contemplation of the parties when said stevedoring contract was made.

## XII.

Third-party defendant Portland Stevedoring Company was not negligent, nor did it breach its stevedoring contract in any particular, by or because of the manner in which it did the work at No. 3 'tween deck hatch, as aforesaid, nor in respect of any of those facts, things or circumstances which caused plaintiff's injuries, or at all.

## XIII.

The said defective hatch covers were tendered to Portland Stevedoring Company by Oceanic Steamship Company, and the Stevedoring Company was invited by the Steamship Company to use them as they were. There was no duty on the Stevedoring Company to point out to the ship the defects in the hatch covers, and the Stevedore Company, in flooring off the hatch, as aforesaid, was making the hatch a safer place upon which to work.

## XIV.

The said hatch covers were unseaworthy as aforesaid, and the third-party plaintiff's were negligent in permitting and allowing them to become in such condition, and in failing to provide good and sufficient hatch covers. Third-party plaintiffs and the ship's officers knew of this condition.

## XV.

The sole and proximate cause of the injuries to plaintiff Swanson was the said defective and unseaworthy condition of the hatch covers and the negli-

gence aforesaid, and his injuries are in no way attributable to either of the stevedore companies.

#### Conclusions of Law

The Court concludes that the third-party plaintiffs should take nothing from third-party defendants, or either of them, by way of indemnity or contribution, and that judgment should be entered in favor of third-party defendants and against third-party plaintiffs, with costs and disbursements to said third-party defendants.

The Court expressly determines that the aforesaid separate judgment may be entered and that there is no just reason for delay, and expressly directs the entry of said judgment.

Dated March 27, 1957.

/s/ CLAUDE McCOLLOCH,  
Judge.

Service of copy acknowledged.

[Endorsed]: Filed March 27, 1957.



In the United States District Court  
for the District of Oregon

Civil No. 8074

GUY W. SWANSON,

Plaintiff,

vs.

MATSON NAVIGATION COMPANY and  
OCEANIC STEAMSHIP COMPANY,

Defendants and Third-Party Plaintiffs,

vs.

INDEPENDENT STEVEDORE COMPANY,  
a Corporation, and PORTLAND STEVE-  
DORING COMPANY, a Corporation,

Third-Party Defendants.

### JUDGMENT

The above-entitled cause having come on regularly for trial without a jury before the undersigned judge of the above-entitled court. Plaintiff appeared in person and by W. H. Morrison and Howard K. Beebe, his attorneys, defendants appeared by Kenneth Roberts their attorney and the third-party defendants appeared by Erskine Wood of their attorneys. The respective parties introduced evidence upon the issues raised by the pretrial order and their counsel argued the law and the facts orally and by briefs. The court having considered the evidence, arguments and briefs, and

having made its Findings of Fact and Conclusions of Law in favor of the plaintiff and against the defendant, Oceanic Steamship Company, but not yet having determined the issue between the said defendants and the third party defendants and it appearing to the court that there is no just reason for delay in entering judgment herein in favor of the plaintiff and against the defendant, Oceanic Steamship Company,

Now, Therefore, based upon the said Findings of Fact and Conclusions of Law made and heretofore entered herein,

It Hereby Is Considered, Ordered and Adjudged that plaintiff recover of and from the defendant, Oceanic Steamship Company, the sum of \$112,053.60 together with his costs and disbursements herein incurred; and

It Is Further Ordered that plaintiff take nothing from defendant, Matson Navigation Company.

Dated this 27th day of March, 1957.

/s/ CLAUDE McCOLLOCH,  
United States District Judge.

Service of copy acknowledged.

[Endorsed]: Filed March 27, 1957.



In the United States District Court  
for the District of Oregon

No. Civil 8074

GUY W. SWANSON,

Plaintiff,

vs.

MATSON NAVIGATION COMPANY and  
OCEANIC STEAMSHIP COMPANY,

Defendants and Third-Party Plaintiffs,

vs.

INDEPENDENT STEVEDORE COMPANY,  
a Corporation, and PORTLAND STEVE-  
DORING COMPANY, a Corporation,

Third-Party Defendants.

### JUDGMENT

This cause having been fully tried before the undersigned judge, and the Court having entered its judgment in favor of plaintiff and against defendant Oceanic Steamship Company, and the third-party plaintiffs having sought indemnity from the third-party defendants, and the Court having made and filed Findings of Fact and Conclusions of Law, on the issues between third-party plaintiffs and third-party defendants, and having determined that this separate judgment may be entered, it is now

Considered, Ordered and Adjudged that the third-party plaintiffs be non-suited as to the third-party

defendants, and recover nothing from said third-party defendants, or either of them, and that said third-party defendants have and recover their costs and disbursements from third-party plaintiffs, taxed at \$40.00.

Dated March 27th, 1957.

/s/ CLAUDE McCOLLOCH,  
Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed March 27, 1957.

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[Title of District Court and Cause.]

Civil No. 8074

### NOTICE OF APPEAL

To: Guy W. Swanson and to his attorney W. H. Morrison (Maguire, Shields, Morrison & Bailey) and to Independent Stevedore Company and Portland Stevedoring Company, and to Erskine Wood (Wood, Matthiessen, Wood & Tatum), their attorneys:

Notice is hereby given that Oceanic Steamship Company, a corporation, defendant and third-party plaintiff, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgments entered in this case on the 27th day of March, 1957, which are as follows:

“Now, Therefore, based upon the said Findings of Fact and Conclusions of Law made heretofore and entered herein,

“It Is Hereby Considered, Ordered and Adjudged that plaintiff recover of and from the defendant, Oceanic Steamship Company, the sum of \$112,053.60, together with his costs and disbursements herein incurred;”

“\* \* \* it is now

“Considered, Ordered and Adjudged that the third-party plaintiffs be nonsuited as to the third-party defendants, and recover nothing from said third-party defendants, or either of them, and that said third-party defendants have and recover their costs and disbursements from third-party plaintiffs, taxed at \$. . . . .”

Dated this 21st day of May, 1957.

MAUTZ, SOUTHER, SPAULD-  
ING, DENECKE & KINSEY,

By /s/ ARVIN H. DENECKE,

Attorneys for Oceanic Steamship Company, Defendant and Third-Party Plaintiff.

[Endorsed]: Filed May 21, 1957,

[Title of District Court and Cause.]

### UNDERTAKING ON APPEAL

Know All Men by These Presents, That Oceanic Steamship Company, defendant and third party plaintiff, as principal, and Federal Insurance Company, a corporation, as surety, are held and firmly bound unto Guy W. Swanson, plaintiff; Independent Stevedore Company, a corporation, and Portland Stevedoring Company, a corporation, third party defendants, in the full and just sum of Two Hundred and Fifty (\$250.00) Dollars, to be paid the said Guy W. Swanson, Independent Stevedore Company and Portland Stevedoring Company, or their assigns, to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of May, 1957.

Whereas, on the 27th day of March, 1957, in the United States District Court for the District of Oregon, in an action pending in said Court between said defendant and third party plaintiff and the said plaintiff and third party defendants, there was rendered a judgment for said plaintiff and for said third party defendants and against defendant and third party plaintiff and for the said plaintiff's and third party defendants' costs herein incurred, the said defendant and third party plaintiff having filed in said Court a notice of appeal to reverse the judgment in the aforesaid action by appeal to the

United States Court of Appeals for the Ninth Circuit.

Now, the condition of the above obligation is such that if said defendant and third party plaintiff shall pay the costs if the appeal is dismissed or the judgment affirmed or such costs as the appellate court may award if judgment is modified, then the above obligation to be void; or else to remain in full force and effect.

OCEANIC STEAMSHIP COMPANY,

By /s/ ARVIN H. DENECKE,  
Of Its Attorneys, Principal.

[Seal] FEDERAL INSURANCE COMPANY.

By /s/ E. STEWART,  
Attorney-in-Fact, Surety.

Countersigned:

DOOLY & CO.

By /s/ R. M. DOOLY,  
Partner, Oregon Resident  
Agent.

[Endorsed]: Filed May 21, 1957.

[Title of District Court and Cause.]

### ORDER

This matter coming on to be heard *ex parte* this day upon motion of Oceanic Steamship Company, through its attorneys, Mautz, Souther, Spaulding, Denecke & Kinsey (Kenneth E. Roberts), for an order extending the time for the filing of the record on appeal and docketing the within action in the United States Court of Appeals for the Ninth Circuit, to enable Oceanic Steamship Company to have additional time to consider the said appeal, and the Court being fully advised in the premises,

It Is Hereby Ordered that the time for filing the within appeal and docketing the action be and is hereby extended to ninety days from the first date of the notice of appeal.

Dated this 23rd day of May, 1957, at Portland, Oregon.

/s/ CLAUDE McCOLLOCH,  
Judge.

[Endorsed]: Filed May 23, 1957.

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[Title of District Court and Cause.]

### STIPULATION AS TO RECORD

It is hereby stipulated between Oceanic Steamship Company, a corporation, defendant and third party plaintiff, and Independent Stevedore Com-



pany, a corporation, and Portland Stevedoring Company, a corporation, third party defendants, through their respective attorneys, that the complete record and all the proceedings and evidence in the within-entitled action are hereby designated for inclusion in the record on appeal.

Dated this 20th day of May, 1957.

WOOD, MATTHIESSEN, WOOD  
& TATUM,

By /s/ ERSKINE WOOD,  
Attorneys for Third Party Defendants, Independent  
Stevedore Company and Portland Stevedoring  
Company.

MAUTZ, SOUTHER, SPAULD-  
ING, DENECKE & KINSEY,

By /s/ KENNETH E. ROBERTS,  
Attorneys for Defendant and Third Party Plaintiff  
Oceanic Steamship Company.

[Endorsed]: Filed June 10, 1957.

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[Title of District Court and Cause.]

### STIPULATION

It is stipulated and agreed between the undersigned attorneys for the defendant and third party plaintiff Oceanic Steamship Company, and third party defendants, Independent Stevedore Company and Portland Stevedoring Company, that the orig-



inal copies of all the exhibits introduced in the within cause be sent to the Clerk of the United States Court of Appeals for the Ninth Circuit, in lieu of copies thereof.

Dated this 20th day of May, 1957.

WOOD, MATTHIESSEN, WOOD  
& TATUM,

By /s/ ERSKINE WOOD,  
Attorneys for Third Party Defendants, Independent  
Stevedore Company and Portland Stevedoring  
Company.

MAUTZ, SOUTHER, SPAULD-  
ING, DENECKE & KINSEY,

By /s/ KENNETH E. ROBERTS,  
Attorneys for Defendant and Third Party Plaintiff  
Oceanic Steamship Company.

[Endorsed]: Filed June 10, 1957.

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[Title of District Court and Cause.]

### ORDER

This matter coming on to be heard upon the motion of Oceanic Steamship Company, through its attorneys, Mautz, Souther, Spaulding, Denecke & Kinsey (Kenneth E. Roberts), for an order directing the Clerk of the above-entitled Court to transmit in the original form all the exhibits introduced in the within cause to the Clerk of the United States

Court of Appeals for the Ninth Circuit, and it appearing to the Court that the parties through their respective attorneys, have so stipulated, and the Court being advised in the premises, it is hereby

Ordered that the Clerk of the above-entitled Court transmit to the Clerk of the United States Court of Appeals for the Ninth Circuit, in their original form, all exhibits introduced in the trial of the above-entitled cause.

Dated at Portland, Oregon, this 10th day of June, 1957.

/s/ CLAUDE McCOLLOCH,  
Judge.

[Endorsed]: Filed June 10, 1957.

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[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH  
APPELLANT INTENDS TO RELY ON  
APPEAL

Appellant respectfully submits the following statement of points on which appellant intends to rely on appeal pursuant to Rule 17(6).

1. The Trial Court erred in finding and concluding that the Oceanic Steamship Company was negligent in permitting and allowing the hatch covers to become unseaworthy and in failing to pro-

vide good and sufficient hatch covers and that the appellant, Oceanic Steamship Company, and the ship's officers knew of the condition of the hatch covers and that this was a proximate cause of the plaintiff's injuries.

2. The Trial Court erred in finding and concluding that the appellee Stevedoring Companies were not negligent in any way and that the sole proximate cause of the injuries to the plaintiff was the defective and unseaworthy condition of the hatch covers and the negligence of the appellant, Oceanic Steamship Company, and the ship's officers.

3. The Trial Court erred in not finding that the unseaworthy condition of the vessel was merely a passive condition and that Oceanic Steamship Company and the ship's officers were not negligent.

4. The Trial Court erred in not finding that the active negligence of the appellee Stevedoring Companies was the proximate cause of plaintiff's injuries.

5. The Trial Court erred in not finding that the appellee Stevedoring Companies failed to discharge their obligations or refrain from doing work on the vessel, or using any part of the vessel negligently or in any manner which would foreseeably impose liability upon the vessel and the appellant, Oceanic Steamship Company.

6. The Trial Court erred in not finding that the appellee Stevedoring Companies breached their con-

sensual obligation to the appellant, Oceanic Steamship Company, to perform the work of loading and all work incidental thereto in a reasonably workmanlike and safe manner.

7. The Trial Court erred in not entering a judgment as proposed by the appellant, Oceanic Steamship Company, allowing full indemnity against appellee Stevedoring Companies or either of them.

8. The Trial Court erred in entering judgment dismissing appellant Oceanic's third party complaint against the appellee Stevedoring Companies or either of them.

Respectfully submitted,

MAUTZ, SOUTHER, SPAULD-  
ING, DENECKE & KINSEY,

By /s/ KENNETH E. ROBERTS,  
Attorneys for Appellant.

Service of copy acknowledged.

[Endorsed]: Filed July 22, 1957.

United States District Court,  
District of Oregon

Civil No. 8074

GUY W. SWANSON,

Plaintiff,

vs.

MATSON NAVIGATION COMPANY, a Corpora-  
tion, and OCEANIC STEAMSHIP COM-  
PANY, a Corporation,

Defendants and Third-Party Plaintiffs,

vs.

INDEPENDANT STEVEDORING COMPANY,  
a Corporation, and PORTLAND STEVEDOR-  
ING COMPANY, a Corporation,

Third Party Defendants.

### TRANSCRIPT OF PROCEEDINGS

Before: Honorable Claude McColloch,  
U. S. District Judge.

#### Appearances:

WILLIAM MORRISON and  
HOWARD BEEBE,  
Attorneys for Plaintiff.

KENNETH ROBERTS,  
Attorney for Matson Navigation Company.

ERSKINE WOOD,  
Attorney for Third Party Defendants.

February 5, 1957—10:10 A.M.

(Whereupon, opening statements were made by counsel but not transcribed.)

(Whereupon, Plaintiff's Exhibits 1, 4, 5, and 6-A through 6-R were marked for identification.)

The Court: Call your witness.

Mr. Morrison: Call Mr. Uskoski.

CLARENCE USKOSKI

produced as a witness on behalf of the plaintiff and having been first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Morrison:

Q. Mr. Uskoski, where do you live?

A. In Vancouver, Washington.

Q. Vancouver, Washington. Are you a married man?

A. Yes.

Q. And what line of work do you follow?

A. Longshoring.

Q. How long have you worked at longshoring, as a longshoreman?

A. Since '49.

Q. And were you present on the morning of this accident? [2\*]

A. Yes, sir.

Q. Who was your partner that morning?

A. Guy Swanson.

Q. That's the plaintiff in this case?



(Testimony of Clarence Uskoski.)

A. Yes, sir.

Q. Do you recall approximately what time you reported for work that day?

A. We started work at 8:00 o'clock.

Q. You started work at 8:00 o'clock?

A. Yes.

Q. Was that your first day on this particular work?      A. Yes.

Q. And what type of work were you going to do?

A. We were going to load lumber.

Q. Load lumber. Now, about what time did the accident happen?

A. Approximately between 9:30 and 10:00, that's as close as I can give.

Q. As close as you can give, and on what deck was that?      A. Lower 'tween deck.

Q. Now, will you just state—or, what did you do after you reported there?

A. Well, we—first of all we rigged up the ship's gear to go down in the lower hold, to go in the hold we uncovered the top deck and I believe we uncovered a shelter deck on [3] the upper 'tween deck and then we went to the lower 'tween deck.

Q. And what did you—you mentioned—there was mentioned here a king beam. What was the condition of the king beam in the lower 'tween deck when you arrived there?

A. Well, when we went to the lower 'tween deck, of course, we right away noticed this first beam was way up high.

Q. And what was done about that?



(Testimony of Clarence Uskoski.)

A. Well, we held a discussion and it seemed unsafe to work on, so——

Q. What did you do about it?

A. Well, we measured the other beams to see if there was any beam shorter than that one, so we could exchange, and we found that the forward beam was a little shorter, so we proceeded to exchange the two, the two beams.

Q. You changed the aft beam with the forward beam?

A. That's right, sir.

Q. And were these hatch—what kind of hatch covers did this have there?

A. Metal hatch covers.

Q. What—about what are the dimensions of these hatch covers?

A. I'd say roughly two feet wide and close to four feet long.

Q. About what is the weight of one of these hatch covers? [4]

A. It would be a rough guess, 25 to 30 pounds.

Q. And what are they made up of?

A. Some kind of metal, I couldn't say, sir.

Q. Some kind of metal, and were you replacing these hatch covers when this accident occurred?

A. We had exchanged the beams and were putting the hatch covers back on and the accident happened.

Q. When the accident happened and you—how many of you were carrying this hatch cover?

A. I was on one end and Guy Swanson was on the other end.

(Testimony of Clarence Uskoski.)

Q. And would you tell the Court what happened?

A. Well, when we was putting—we had three hatch covers, I believe, on the first section—we was putting the third one on the second section and when he stepped on one of those hatch covers it gave way on him and he slipped forward and fell in the hatch.

Q. You mean the hatch cover slipped forward?

A. Well, it give way on him.

Q. Gave way on him? A. Yes.

Q. And what happened to the hatch cover?

A. It fell in the lower hold.

Q. And what happened to the hatch cover that you were carrying?

A. That went with him. [5]

Q. And where did Swanson end up?

A. In the lower hold.

Q. Could you see those two hatch covers down below there? A. Yes, they were down there.

Q. Now, what were the conditions of these two hatch covers?

A. Just like the rest of them, pretty badly bowed.

Q. Pretty badly bowed? A. Yes, cupped.

Q. Cupped? A. Yes.

Q. And what was Mr. Swanson's condition as to whether or not he was conscious or unconscious at that time?

A. He was unconscious, breathing heavy and gasping for air. He was definitely out.

Q. And was he still unconscious when he was taken away from there? A. Yes.

(Testimony of Clarence Uskoski.)

Q. Now, were these—were these two hatch covers later moved?

A. Yes, they was brought up to the 'tween deck.

Q. To the 'tween deck? A. Yes.

Q. And do you recall how they were put up there?

A. I don't recall, but one of the guys put them in the aft trunk of the ship because we didn't want to use them [6] over again.

Q. I mean, how were they handed—were you present when they were handed up, that is what I am asking?

A. I recall one of the men passing them up and I believe I handed one of them myself. I ain't too clear on that.

Q. You are not too clear on that? A. No.

Q. You do have some recollection of them being handed up? A. Yes.

Q. How long had you worked with Swanson prior to this?

A. Oh, several jobs, I liked to work with Swanson as often as I could.

Q. What kind of a worker was he?

A. A fine worker.

Q. And what was the——

The Court: Is the plaintiff here?

Mr. Morrison: Yes, your Honor.

The Court: Which man is he?

Mr. Morrison: The gentleman right here on the end.

(Testimony of Clarence Uskoski.)

Q. What type of a person was he before that; was he a jovial person or a morose sort of person?

A. Well, he was a happy-go-lucky guy, never complained much of anything.

Q. Did you know of him being sick or anything before this [7] accident?      A. No.

Q. Have you had occasion to see him since this accident?

A. Once, because I was in the hospital myself.

Q. Up in the hospital?      A. Yes, uh-huh.

Q. But you haven't seen him since then, so you know nothing of his condition at the present time?

A. No.

Q. What was the condition of his health before the accident, general health; was he robust?

A. He was a pretty hefty guy, I mean, pretty husky I should say.

Mr. Morrison: You may cross-examine.

#### Cross-Examination

By Mr. Roberts:

Q. Mr. Uskoski, was Mr. Swanson present when you first started uncovering this number 3 hatch?

A. Yes.

Q. He was a member of the gang, was he?

A. Yes.

Q. I assume that you used the ship's equipment to uncover the hatch; is that right?

A. That's right.

Q. And then you got down to the lower 'tween

(Testimony of Clarence Uskoski.)

deck and [8] you saw this condition; is that correct?      A. That's right.

Q. Now, what did you do then when you saw the condition, and by that, I mean not only yourself but the gang; did you have a conference of some sort?

A. Yes, we had quite a discussion.

Q. And who was the leader in that discussion, the gang boss or the steward or all of you?

A. Well, we all put in our two-bits worth.

Q. I see. And did the walking boss come down?

A. Yes, he was down there.

Q. He was down there and you discussed it generally amongst yourselves; is that correct?

A. Yes.

Q. And what was it that you were objecting to about the condition of the hatch covers?

A. Because the beam was not settled in place and the hatch covers were rised up in the middle on that uncertain beam.

Q. I see, sort of a peak in the after side?

A. That's right.

Mr. Roberts: Your Honor, this is a little confusing as to how the accident happened. I wonder if you would just excuse me for a moment, while I make a rough diagram of it.

Q. Now, before—no, before you go, I'd like to ask you [9] a few more questions about the gang steward. What does he do, is he in charge of the safety?      A. The steward?

Q. Yes.

(Testimony of Clarence Uskoski.)

A. I don't recall whether the gang had a steward or not at the time.

Q. And who was the gang boss?

A. Vic Luns—I can't remember his name.

Q. Mr. Lundstrom? A. Yes.

Q. I see. Who was it that actually gave the order to switch the aft and forward beams, strongbacks?

A. I think the gang boss agreed with us that it was best to move it, to switch the beams.

Q. Now, in this discussion when the walking boss was down there, he told you that he was going to get some dunnage or wood to cover up the hatch openings? A. He mentioned it, yes.

Q. And to put it across the entire hatch; is that correct? A. That's right.

Q. You were going to load lumber into that hatch and stow it into the wings; is that correct?

A. That's correct.

Q. What kind of a ship is this, by the way, was it a C-2 or -3? [10] A. I believe a C-2.

Q. And these ships, have you worked on them before, Mr. Uskoski?

A. On that certain type, I don't know whether it was that particular ship.

Q. Do those ships come equipped with steel hatch covers?

A. I think that certain line does, yes.

Q. I see. And when you went down into this number 3 'tween deck, in addition to this controversy or discussion you had about the strongback,



(Testimony of Clarence Uskoski.)

was there any discussion about the general nature and the condition of the hatch boards or the hatch covers themselves?

A. Yes, because we always come down on those steel hatch covers there, it's kind of a dangerous deal.

Q. What did you discuss; what was the nature of the discussion, that they were cupped or dished or bowed or what?

A. That they were bowed where loads had landed on them.

Q. So in talking to the gang boss you also discussed the condition of the hatch-board covers themselves; is that correct?

A. That's correct.

Q. And it was eventually decided that you would cover them with wood; is that correct?

A. That's correct.

Q. When the forward and aft beams were switched was the [11] walking boss——

Mr. Wood: It wasn't fore and aft, it was athwartship; weren't those beams athwartship; which way were they?

The Witness: Well, forward-and-aft beams mean they were——

Mr. Wood: But they were athwartship?

The Witness: Oh, yes.

Mr. Roberts: Well, what I mean, the front beam was switched with the back beam?

The Witness: Yes.

The Court: What was he going to cover with lumber?



(Testimony of Clarence Uskoski.)

Mr. Wood: Yes, what were you going to cover with lumber?

The Witness: Well, the hatch covers were pretty wobbly and shaky, so we figured maybe we would lay dunnage on there or lumber, and it would be safer to walk on.

The Court: On what?

The Witness: On the hatch covers.

Q. (By Mr. Roberts): On the hatch covers themselves? A. Yes.

Q. Was the walking boss in the hold when you decided to switch the beams?

A. I don't recall him being in the hold.

Q. Mr. Uskoski, do you know what the dimension is of the lip on the crossbeam that the hatch board lays on? [12]

A. I would say roughly about three inches.

Q. How about the raised part of it?

A. It's the thickness of a hatch.

Q. What would that be, about two or three inches?

A. No, an inch and a half, I'd say.

Q. Now, you say before moving the beams, somebody measured them, did you say somebody measured them? A. Yes.

Q. Who was that, do you know?

A. Well, I think a lot of us partook in that.

Q. What?

A. Quite a few of us guys partook in that.

Q. And you eventually decided that one was smaller than the other; is that it?

(Testimony of Clarence Uskoski.)

A. That's right.

Q. Do you know whether these beams are, in fact, interchangeable or can you use the beam in any slot there?

A. Most of your ships you can, but sometimes they might be a little shorter.

Q. Do you know in this particular instance whether you could?

A. It worked this time, yes.

Q. What?           A. It worked this time.

Q. What I am trying to get from you, Mr. Uskoski, do you [13] know whether the beam that was in the forward part of the hatch opening was designated for that particular slot?

A. I couldn't say.

Q. Could you have used it anywhere in that hatch opening?           A. The forward beam?

Q. Yes.

A. I couldn't say, maybe it wouldn't have fit another one.

Q. These hatch boards, how do they get bent and twisted and broken?

A. Oh, I think it's primarily due to the cause of landing loads on them.

Q. In the general course of the stevedoring operation and loading and unloading ship; is that correct?

A. That's correct.

Q. Do you know if anyone from the stevedoring gang reported this dissatisfaction with the board to any of the ship's officers?

A. Would you repeat that?

Q. Would you know whether anybody, one of the

(Testimony of Clarence Uskoski.)

stevedoring gang in that number 3 hold, reported any dissatisfaction with the hatch covers to any of the ship's officers?

A. I don't—I couldn't say.

Q. Now, why don't you come down so that the Court may get a clearer picture of this hatch. Draw an ordinary hatch opening? [14]

A. You want me to draw the general line?

Q. Yes, just the general line.

A. I ain't a very good artist.

Q. That's O.K. Now, just put the front part of the ship with an arrow? A. O.K.

Q. Now, as I understand it you say you switched the forward beam. Now, put where you mean the forward beam was?

A. I will just put it in the beams here (indicating).

Q. O.K. Now, show me where you switched the beam for the one that was farthest from the arrow?

A. I'll just make it two.

The Court: What are those four things there?

The Witness: Those are beams, your Honor.

The Court: What is the size of them?

Mr. Roberts: The hatch opening, your Honor, is about—how many feet would you say?

The Witness: 20 feet wide.

Mr. Roberts: You have to use the winch to switch them?

The Witness: Yes.

Mr. Roberts: The crossbeams that the hatch board rests on are made of steel?

(Testimony of Clarence Uskoski.)

The Court: Heavy steel?

Mr. Roberts: The hatch board rests on top of these beams—— [15]

The Court: They are steel beams then?

Mr. Roberts: Pardon, your Honor?

The Court: They are steel beams?

Mr. Roberts: That's right.

Q. Now, Mr. Uskoski, you were not going to work in the lower hold; is that right?

A. No, not at that time.

Q. You were going to load lumber into the 'tween deck or shelter deck? A. That's right.

Q. And you had to use this hatch opening in order to load that lumber; is that correct?

A. That's correct.

Q. Now, when you switched the forward-and-aft beam, what board did you take off?

A. We uncovered these two sections here (indicating).

Q. Now, why don't you put a cross in that section, the two you were taking off. Now, how about the forward part?

A. We had to do the same thing there.

Q. You didn't completely uncover the entire hold? A. No.

Q. Just the two sections involved in the forward-and-aft beam; is that correct?

A. That's right.

Q. Now, and then you—after you switched the beams you [16] replaced the hatch boards; is that correct? A. That's right.

Q. Now, where were you and the crew working;

(Testimony of Clarence Uskoski.)

were you working in the forward end of the hatch or after?      A. I was working on the after end.

Q. You were working in the after end, and who was with you?      A. Guy Swanson.

Q. O.K. Now, was there any other longshoreman covering up with you two?

A. No, not in this particular spot, no.

Q. Do the two of you cover the entire hatch there?      A. Up to the middle.

Q. And who does the other end?

A. The other men.

Q. Two men on the other side?

A. Two men on each side of the tip, and these are the dividing lines (indicating).

Q. I see. Now, who took the boards off in the first place, the hatch covers, before you switched the beams?

A. I couldn't say, because I think we all had a part in that.

Q. All the men in the gang?      A. Yes.

Q. And do you know where you placed those boards? [17]

A. We laid them in the wing, three feet from the coaming.

Q. In the area of the coaming?      A. Yes.

Q. This coaming, by the way, isn't an abrupt slope, it slopes up, doesn't it?

A. It's got a little gradual uprising.

Q. From the flatness of the deck itself?

A. Uh-huh.



(Testimony of Clarence Uskoski.)

Q. So you, after you switched the beams, then did you use the same boards to cover it up again?

A. Yes, I think so.

Q. O.K. Now, will you tell the Court what you and Mr. Uskoski——

A. Mr. Swanson.

Q. ——Mr. Swanson covering up that corner——

A. What we done?

Q. Yes.

A. This I ain't too sure about it, how many covers we put up, but I know——

Q. Now, before you go there, Mr. Uskoski, how about the second section there, how about that section?

A. What about that section?

Q. Well, had you started covering that up?

A. No, we covered the two together.

Q. Would you tell the Court and me also, if you would, [18] how you do that?

A. This hatch cover rests on that beam, it has a little rise in the middle with a little ledge that the hatch cover rests on.

Q. You say that ledge is about three inches?

A. Yes. First, we put this hatch cover on (indicating), then we went over and put one here (indicating).

Q. Now, how did you put that on?

A. Well, we picked it up, one from each corner and lay it down, reach over and lay it down.

Q. And you reach over from the bottom part to lay it onto the ledge?

A. No, they got a handle on the top.

Q. Oh, a handle on each corner?

(Testimony of Clarence Uskoski.)

A. Countersunk handle.

Q. O.K. So you have these two covers in, then what did you do with the next two?

A. Well, then we put one here—I don't know if this was three here or two here (indicating) but we will just say there was two on here——

Q. Say you had four on there altogether?

A. No, this wouldn't be—there would be three on altogether, we will say.

Q. O.K.

A. And then from here (indicating) we are carrying hatch [19] covers, Mr. Swanson was leading the way and he stepped on this one (indicating) or either this one (indicating); if there was three here, it would have been this one (indicating). We were walking over to put one on here (indicating) and one of these two gave way on him.

Q. Where were you?

A. I was following him up, he was leading the way, I was on the solid deck.

Q. I am still a little confused. The board that Mr. Swanson was carrying was going on the inside of the——

A. I believe that's right.

Q. Are you certain about that?

A. Yes, because we alternate them for safety, so we don't have to reach too far.

Q. Well, wouldn't it be more probable that you would put in the inside one next?

A. We had the hatch boards—we were carrying them from here (indicating) from this angle, so that's really the closest one, that would be first.



(Testimony of Clarence Uskoski.)

Q. Well, put a number 1 where you put the first one. Now, number 2, number 3, number 4—so you put in 3 before you put 4 in; is that correct?

A. That's right.

Q. O.K. Now, how would you place number 4?

A. We walk from this angle (indicating), he'd be on this [20] and I'd be up here (indicating), see; I have the first handle and he has the closest handle.

Q. I see. And what happened then?

A. Well, then we went to get another one, and a lot of the time it varies, you know, under the conditions——

Mr. Wood: May I ask you, please, I don't know, how do you place number 4, were you on the outside of the edge?

The Witness: I am walking on here (indicating).

Mr. Wood: You are on number 3?

The Witness: Yes.

Mr. Wood: And where would Mr. Swanson be?

The Witness: He would be walking down here, see (indicating)?

Mr. Wood: On number 5?

The Witness: On number 2.

Mr. Wood: On number 2?

The Witness: Yes, we put one in on each side, and then we was carrying another one, we was in the process of taking it to put it in place at the time he stepped on that first cover or second cover.

Q. (By Mr. Roberts). So, to the best of your recollection, the cover that you were going to replace was number 4; is that correct? A. Yes.

(Testimony of Clarence Uskoski.)

Q. And it was number 3 that slipped away; is that correct? [21]      A. Yes.

Q. And it was number 3 that slipped away; is that correct?

A. Number 3 or 1, I don't know which one.

Q. You would be walking toward the front end of the ship, wouldn't you?

A. That's right, it happened that the hatch covers happened to be in here (indicating) on this corner that we laid them down.

Q. You don't actually know what that number 3 cover did, do you, under Mr. Swanson's feet?

A. No, it happened so fast.

Q. You don't know whether that hatch cover was either on the ledge or up on the flange, do you?

A. Oh, it was—in the beginning it was on the ledge all right, because when we put them in place, we always——

Q. You know the ledge, and then you have this piece that sticks up in the middle of your beam?

A. Yes.

Q. It wasn't on top of that, do you know?

A. No.

Q. You don't know?

A. I know, because we placed them in the slot.

Q. You are certain you placed them in the right slot?

A. We had been around there too long to put them in the wrong place. [22]

Q. You don't know whether it was on top or not, what do you mean placed them in the slot?

(Testimony of Clarence Uskoski.)

A. Well, they're supposed to fit on those lips or ledges.

Q. Is there any lip on the outside of the edge of the hatch coaming?      A. Yes.

Q. Where is that, what size is that?

A. It should be the same size.

Q. About three inches?      A. Yes.

Q. Now, let me get this straight. At the time you and Mr. Swanson were carrying the hatch cover, you were walking around the aft end of the hatch coaming toward the front end of the ship?

A. More cater-cornered from in here (indicating). In this area, actually, how we were walking is pretty hard to say.

Q. When Mr. Swanson went into the lower hold, where were you standing?

A. Approximately out here (indicating) on this coaming here (indicating).

Q. You weren't on the hatch cover——

A. No.

Q. ——is that correct?      A. No. [23]

Q. And you let go of your end of the hatch cover?

A. I must have, yes.

Q. Did that fall in the hold with him?

A. Yes.

Q. Which way did he fall or do you know?

A. I believe when this gave way he was in forward motion, I think he fell across this beam and hit his head on this (indicating). That just flashed in my mind.

(Testimony of Clarence Uskoski.)

Q. You don't know, are you telling it, or do you know that he fell across that edge and hit his head?

A. That's the way it flashed in my mind, it happened so fast it's pretty hard to tell.

Q. Will you take the witness stand again, Mr. Uskoski?

The Court: We will take a few minutes' recess.

(A short recess.)

Mr. Roberts: I won't be much longer, Mr. Uskoski. Looking at this diagram again, you think you may have placed the third hatch cover and you were in the process of going to place the fourth; is that correct?

A. That's closest to my recollection.

Q. And that was—it was the third one that went down in the hold in addition to the one you were carrying?

A. That's right, my figures might be a little haywire, we may have had three on there instead of two.

Q. It's something, either two or three on the first line? [24]

A. That's right.

Q. Now, and Mr. Swanson, when he went into the hold, fell across that beam that you had just replaced; is that correct?

A. I wouldn't swear on that, but that's my vision, I mean, I just got a glimpse of it, it happened so fast.

Q. Do you know what happened, assuming that number 3 board was the one that went into the hold, do you know what happened to that, did it go down

(Testimony of Clarence Uskoski.)

all right?           A. I couldn't say.

Q. You don't know?           A. No.

Q. Do you know what the position was before Mr. Swanson stepped on it?

A. I assume it was in its place as we put it in.

Q. You don't know, though, do you?

A. No, because you don't watch every——

Q. Are these hatch covers interlocking?

A. Interlocking?

Q. Yes.           A. No.

Q. Do you know, Mr. Uskoski, whether the hatch covers at the forward part of the hatch opening are bigger size or smaller size than the ones you were replacing at the after end?

A. I didn't get that question.

Q. Well, are all the hatch covers in this particular [25] hatch opening the same size?

A. I believe they are standard size.

Q. Well, are they all the same size?

A. I couldn't swear by that, no.

Q. Well, I will ask it this way. Can you put that, as you say that number 3 hatch cover, up in the forward part of the hold?           A. I think so, yes.

Q. So you could put them any way; is that it?

A. They are standard size, as far as I could tell or know.

Q. Now, other than treading on the hatch cover, was there any other way to have put number 4 board in place?

A. Oh, I guess there are various ways, yes.

Q. Without having to step on the hatch board?

(Testimony of Clarence Uskoski.)

A. Oh, you have to step on them sooner or later, yes.

Q. Well, couldn't you have come up from the number 2 position and put it on?

A. Yes, but then I would have had to walk on number 1 hatch.

Q. Pardon me?

A. But I would have had to walk on number 1 hatch board.

Mr. Roberts: I think that's all, Mr. Uskoski.

#### Further Cross-Examination

By Mr. Wood:

Q. Mr. Uskoski, when you longshoremen first went down [26] there in the morning, you found this hatch all covered up, didn't you?

A. Lower 'tween decks, yes.

Q. It was all covered? A. Yes.

Q. But there was a slight peak there where the after beam, the crossbeam was a little raised?

A. That's right.

Q. By the way, I think there are eight crossbeams on that hatch, I noticed you put six, I don't think it makes a great deal of difference, but I believe there are eight, aren't there?

A. Seven or eight.

Q. Now, just so we can talk together intelligently, beginning at the forward end you speak of the number 1 crossbeam and then numbers 2, 3, 4, and back, and the last one is number 8. Isn't that the way you describe it?



(Testimony of Clarence Uskoski.)

A. Something or—something that way, yes, sir.

Q. Let's call it that way, yes, so we can talk easily. When you found this slight elevation there at the after end of the hatch, you had a discussion and you decided to change the crossbeams, didn't you?

A. Yes.

Q. Then after you changed the crossbeam, having taken off those hatch covers for that purpose and you brought [27] the forward number 1 crossbeam back and put it in number 8's place and reversed them, then all the beams were level, weren't they?

A. That is right, sir.

Q. And when they were all level, that was the way they should be, wasn't it?

A. That's right, sir.

Q. So there was no further complaint about the beams, was there; that's right, isn't it?

A. That's right.

Q. And it was in the process then of putting the hatch covers back on the after beam that the accident happened?

A. Yes, sir.

Q. Now, I thought you said in the beginning that it was the number 1 hatch cover that was marked there on the blackboard that fell, but later I understood you to say it might have been 2 or 3. Now, which is right?

A. I said 1 or 3.

Q. 1 or 3?

A. Yes, that's what I said, yes.

Q. But you don't know which one?

A. No.

Q. I understood you to say originally that it was



(Testimony of Clarence Uskoski.)

number 1 and that you know it was in place because you wouldn't have stepped there if it hadn't been in place; you also looked [28] to see——

A. No, when—at the time we set them in place, we set them in the right place.

Q. Well then, to the best of your belief and knowledge, both number 1 and number 3 were in place, weren't they?      A. Yes, sir.

Q. Setting down on the flange of the crossbeam and level?      A. Yes, sir.

Q. Did you hear the discussion about going and getting some lumber to what they call "floor" this hatch off?      A. Yes.

Q. That was the plan, to make it safer, wasn't it?

A. Yes, we couldn't find—if we couldn't find beams to fit.

Q. I mean, that's what you were going after, you made this transposition of the beams and were putting back the hatch covers, then when you got the hatch covers all in place you were going to floor off with lumber?      A. Yes.

Q. To make it a safer place to work?

A. Yes, sir.

Q. Because you didn't trust the hatch covers?

A. Yes, sir.

Mr. Wood: That's all.

Mr. Morrison: I'd like to have this marked [29] for identification—oh, yes, this has been marked.

The Court: All the exhibits that have been marked as exhibits are deemed to have been offered and admitted subject to such objections as may have

(Testimony of Clarence Uskoski.)

been heretofore made or may hereafter be stated.  
Everything is in now.

Mr. Morrison: May I hand this to the witness?

The Court: Yes.

### Redirect Examination

By Mr. Morrison:

Q. What does that picture show; does that show the floor covering you put on that?

A. That's part of it.

Q. Part of the lumber you put on there?

A. Yes, sir.

Q. And you put that on on account, you say, number 1, on account of the wobbly hatches?

A. Yes, sir.

Q. Now, do some of the hatch covers appear to be upside down there, set in upside down, do you know?

A. Yes, sir.

Q. Will you point that out to the Court?

The Court: I am looking over your shoulder.

Q. (By Mr. Morrison): Just the ones that are upside down.

A. The ones that are upside down——

The Court: Do you want to come up here, gentlemen? [30]

The Witness: These are upside down, with the ridges on them.

Q. (By Mr. Morrison): Why were they put in upside down?

(Testimony of Clarence Uskoski.)

A. We believed they were safer that way because they were cupped.

Q. Because they were bent, you thought it was safe to put them in upside down?

A. To get the rocking motion away from them.

The Court: Well, Mr. Wood, you didn't develop your point completely. You claim that they were in the process of covering them?

Mr. Wood: They were in the process of flooring off, but they hadn't quite reached that point yet.

The Court: You didn't ask him those questions, you said that was the plan, but you didn't ask him whether it had progressed to any extent. This picture that you show here, was that taken——

Mr. Morrison: That was the plan that went into effect afterwards.

The Court: No, wait, this picture doesn't represent the scene of the accident?

The Witness: Yes.

Mr. Morrison: No, your Honor, that's later, to show what they did and as to some of the covers upside down.

The Court: You don't think they had partially floored off? [31]

Mr. Wood: No, they had not reached the flooring off with the lumber.

The Court: You didn't develop what you said in your opening statement, that people had gone off to get lumber.

Mr. Wood: Well, I will, thank you for suggesting it.

(Testimony of Clarence Uskoski.)

While you were doing this work with Swanson that you just descried, the gang boss and some of the longshoremen had gone off to get lumber to floor off with, had they not?

The Witness: The walking boss said he would go order lumber.

Mr. Wood: And had he gone to do it?

The Witness: Yes, I believe so.

Mr. Wood: And while he was gone was when this happened?

The Witness: Yes, sir.

Mr. Wood: And then afterwards did you floor off with lumber?

The Witness: Yes, as the picture shows.

Mr. Wood: Let me see that picture.

(Photograph handed to counsel.)

Mr. Wood: Yes, I don't think I have seen that picture before, but it isn't claimed that this was taken at the time of the accident?

Mr. Morrison: No, that was afterward, showing it floored off. [32]

Mr. Wood: It's just showing us what they mean by flooring off?

Mr. Morrison: And to show the fact that some of these hatches were put in upside down afterwards.

Mr. Wood: But what percentage of these hatch covers were put in upside down; would there have been half of them?

(Testimony of Clarence Uskoski.)

The Witness: I think more than half of them would be put in upside down.

Mr. Wood: Do you think I have developed that sufficiently or——

The Court: I have read the deposition so I am pretty well in the middle of this case already.

Mr. Roberts: Have you finished?

Mr. Morrison: Yes.

### Recross-Examination

By Mr. Roberts:

Q. Mr. Uskoski, as I understand it, just to tell Judge McColloch about the flooring part of it, after the accident and after you completely covered—you still covered the hatch with boards of wood, the openings?

A. Yes, and the ship sent some wooden hatch covers in to replace the real bad ones.

Q. Then you started to replace them; is that it?

A. Yes, after it happened, yes. [32-A]

Q. And the photograph shows some of the hatches, the steel ones upside down and the rest of them right side up? A. Yes.

Q. Why, do you think they wouldn't rock as much upside down?

A. Yes, they wouldn't have that bow in them. When a hatch board is bent, the ends are upright.

Q. Yes? A. The ends of them are up.

Q. But each end is not up at the same distance?

A. No.

Q. You could have one corner a little higher?

(Testimony of Clarence Uskoski.)

A. Yes, but they will stay in better that way.

Q. But you still get a rock, don't you?

A. Not too much; it's a little safer.

Q. Now Mr. Uskoski, this was sticking up how many inches, this beam that you think was misplaced?

A. The beam itself, I'd say three or four inches higher than normally.

Q. Do you think you could have left that beam as it was and just placed lumber over it?

A. It wouldn't be very level.

Q. What? A. It wouldn't be very level.

Q. But it would be safe, wouldn't it? [33]

A. No.

Q. Why not?

A. Because what would make it any safer than otherwise?

Q. Pardon me?

A. No, that's your safety rules, we have to put those beams on firmly.

Q. I see. Wouldn't it—considering that you are loading a cargo, wouldn't the lumber eventually drive the beam down into its proper position?

A. I couldn't say that.

Q. You don't know?

The Court: How do you think the accident happened?

The Witness: Pardon me?

The Court: You heard that, didn't you? Didn't you hear what I asked you?

The Witness: I was looking that way.



(Testimony of Clarence Uskoski.)

The Court: I don't blame you, he is a very fine-looking man. How do you think the accident happened?

The Witness: What caused it?

The Court: Yes.

The Witness: Well, all I can say is what I said before, that he stepped on that cover; it slipped or gave way on him.

The Court: Well, what made it slip or give way on him? [34]

The Witness: I couldn't judge that because either it was bent so much that it was a little short and gave way or he could have stepped on one end, the other end rode up on top of that catch and it slid forward.

The Court: Go ahead, gentlemen, it's your case.

Q. (By Mr. Roberts): When you say it slid forward, what direction on this diagram, to the left or down?

A. Forward.

Q. The way the arrow is pointed?

A. The way the arrow is pointing.

Q. So it would have to go up over the ledge, wouldn't it?

A. That's what I mean, he stepped on one end; it's got a bow in it and it raised the other end enough to come on top of that and it slid forward.

Q. Now, could you tell the Court what part of the board that he was on just immediately before the accident occurred and he fell in the hold; was he on the forward part of the hatch cover or toward the coaming?



(Testimony of Clarence Uskoski.)

A. I—that question isn't quite clear to me.

Q. Well Mr. Uskoski, you said he stepped on the board and everything happened real fast?

A. Yes.

Q. Now, was it when he was first—you know the board, the cover before would be forward and aft, wouldn't it?

A. Yes. [35]

Q. Now, was he forward, on the forward end of the cover or the front end of the ship or the back end—

A. I couldn't say.

Q. —or was he in the middle; you don't know?

A. No, I couldn't say.

Q. And you two fellows placed the cover that went in the hold; is that correct?

A. Yes.

Q. And as I understand your testimony, you don't know or you think that all the covers on this particular opening are all the same size and width?

A. Are supposed to be, yes.

Mr. Roberts: O.K., thank you.

Mr. Morrison: Just to make myself clear, did I understand that if there were a bow in that hatch cover and you stepped on one end of it, it will raise the other end up above the catch?

The Witness: That's right.

Mr. Morrison: That will cause it to slide?

The Witness: Yes.

Mr. Morrison: That's all.

(Witness excused.)

Mr. Morrison: Call Edwin Ferraris. [36]

## EDWIN FERRARIS

produced as a witness on behalf of the plaintiff and having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Morrison:

Q. What is your full name, please?

A. Edwin Ferraris.

Q. And where do you live?

A. I live at 2940 North——

Q. Would you state your name a little louder, please?

A. Edwin Ferraris, F-e-r-r-a-r-i-s (spelling).

Q. And where do you live, again?

A. 2940 Northwest Savier.

Q. What type of work do you follow?

A. Longshoring.

Q. How long have you longshored?

A. Five and a half years.

Q. And were you working on this—down there the morning of the accident?      A. Yes, sir.

Q. Were you on this same gang?

A. Yes, sir.

Q. Did you see the accident?      A. Yes.

Q. Where were you at the time? [37]

A. Well, I can show better on the diagram; I was inshore.

Q. Step right down to the diagram then.

A. Right here (indicating).

Q. Is there a piece of chalk there?

(Testimony of Edwin Ferraris.)

A. I was approximately——

The Court: Just put your initial there, the initial of your last name.

The Witness: Yes.

Q. (By Mr. Morrison): Now, what did you see?

A. Well, at that time I was looking across the hatch and all of a sudden I didn't see Swanson, he and Clarence were coming across at this angle (indicating) and I was looking over there and Swanson just disappeared, and then I looked down and he was laying down in the lower hold, athwartship, on his back.

Q. And were there hatch covers down with him?

A. Yes, sir.

Q. How many? A. Two of them.

Q. Now, you may take the stand.

The Court: How far were you from him?

The Witness: Oh, I think the width of this was perhaps 20 feet, I would say. I think it's 20 feet.

The Court: Which two hatch covers were down with him; I don't suppose you know of those that are marked on [38] the board?

The Witness: Well, I'd say the one that went with him——

The Court: Call them by number.

The Witness: I'd say that—well, of course, I'd say that number 3 went down with him, or something, and the one that they were carrying, it was a—he was across one, had one under him.

The Court: 3 and 4?

(Testimony of Edwin Ferraris.)

The Witness: No. 3, and the one they had in their hands.

The Court: Which two, by numbers, went down the way you saw it?

The Witness: Just 3 by numbers, and the one that they were——

The Court: Well, weren't they carrying one of those four?

The Witness: No; the one they were carrying went down with Swanson.

Mr. Beebe: I think, your Honor, that the testimony was that they were going to place 4, and that 4 that appears on the diagram wasn't actually there, it was where they were going to put it.

The Court: That's what I am trying to find out, I am asking what went down with him, what number?

The Witness: Number 3 went down and the one they were [39] carrying.

The Court: Which was number 4?

The Witness: Number 4.

Mr. Roberts: Was number 4 the one that——

Mr. Morrison: That's the one they were going to put down. All right, you can take the stand.

The Court: You better leave that 4 on there; that isn't your map.

The Witness: Oh, I am sorry.

(Witness resumes stand.)

Q. (By Mr. Morrison): Now, what then, were these hatch covers raised up, were these hatch cov-

(Testimony of Edwin Ferraris.)

ers raised up from the hold?      A. Yes, sir.

Q. And who lifted them up, do you recall?

A. Oh, they passed them up to me.

Q. Passed them up to you?      A. Yes.

Q. And where did you put them?

A. I put them in the trunk on the side.

Q. And did they remain there; were they still there when the pictures were taken?      A. Yes.

Q. And about how long after that were pictures taken of them? [40]

A. Oh, I'd say an hour or so before they came down, maybe it was longer.

Q. 2-F, 2-B and 2-C, I will ask you if that is the two that went down into the hold?

Mr. Roberts: Your Honor, I'd like to know, first of all, who took the pictures and whether he was there when they were taken?

Mr. Morrison: It was Nick Chaveau that took them.

The Court: When?

Mr. Roberts: He is from Frank Pozzi's office?

Mr. Morrison: And your people were out there and took them a few minutes after that?

The Witness: These are the ones (indicating).

Q. (By Mr. Morrison): These two (indicating)?      A. Yes, sir.

Q. And do those show the bends we have been speaking of?      A. Yes.

The Court: Well, they are all admitted, everything is in.

(Testimony of Edwin Ferraris.)

Mr. Morrison: I would like to hand those to the Court.

The Court: All right.

(Photographs handed to the Court.)

Q. (By Mr. Morrison): Plaintiff's Exhibit 2-G, does this picture show the two hatch covers down in the hold before they were lifted up? [41]

A. No; they—did you say that it showed them down there?

Q. That's the two hatch covers down in the hold, is it not?

A. Down in the lower hold where Swanson was?

Q. Yes.

A. No; they didn't take any pictures down there in the lower hold, because we had covered up; we had covered up and put the lumber down, then the photographers came.

Q. This is showing them on the 'tween deck then? A. Yes.

Q. But is that the two I had reference to, the two that were lifted up from the hold?

A. Yes.

Q. Now, did you observe some of these put in upside down? A. Yes.

Q. And where were they put in that way?

A. Well, I think we just figured it was a better deal to put them in that way, so there was less rock, it was to try to make them less rocky.

Q. You mean rocky, because they were bowed like a saucer? A. Yes, sir.



(Testimony of Edwin Ferraris.)

Q. Now, did you know Mr. Swanson fairly well before this accident?

A. Yes; I talked to him quite often.

Q. What kind of a worker was he? [42]

A. He was a good worker.

Q. What was the condition of his general health?

A. He was in excellent health.

Q. And how was he—was he a jovial sort of person?

A. Yes, sir.

Q. Have you seen him since the accident?

A. Yes; I have.

Q. How many times have you seen him since the accident?

A. Oh, at the hospital twice, one time in the barber shop and at the hall a couple of times when he was around up there visiting, about—I'd say four times and this morning.

Q. Now, I am not speaking about that time you have seen him in the hospital, but the times you have seen him that you referred to, did you talk to him on these occasions?

A. Yes; I have talked to him—about the case?

Q. Oh, no. A. Just talking?

Q. Just talking to him general, what is—did you find him in the same mental condition that he was in before this accident?

A. No; he seems pretty moody and I don't know, kind of forgetful. He didn't remember my name, I know, and I don't know, kind of like he is—

Q. Speak a little louder.

(Testimony of Edwin Ferraris.)

A. I'd say it was kind of like a little punchy, he didn't [43] seem quite right.

Q. You have noticed a mental change in him?

A. Definitely.

Mr. Morrison: You may cross-examine.

### Cross-Examination

By Mr. Roberts:

Q. Mr. Ferraris, is that the name?

A. Yes.

Q. Talking about Mr. Swanson, most of you fellows who worked in those gangs, you know one another by nicknames, don't you, usually?

A. Well, not necessarily. I don't have a nickname there.

Q. Did you have any social contact with Mr. Swanson before this accident?

A. Oh, yes; I used to talk with him and talk to him about building the house that he was building before he was hurt.

Q. Would you say he was a quiet sort of an individual, sort of an introvert?

A. No; I would say he was quite an extrovert; he was quite an outspoken person.

Q. Do you know how long he had been on the water front?

A. No; I don't. I couldn't say definitely; I heard some of the fellows say that he came in '42 and then he said he didn't know, but he was there before I was.

(Testimony of Edwin Ferraris.)

Q. Had you worked with him as a partner? [44]

A. Have I ever worked with him as a partner?

Q. Yes. A. No; I haven't.

Q. As I understand it, these two boards that look as though they are in the wings weren't photographed in the lower hold, were they?

A. Where Swanson was?

Q. Yes. A. No, sir.

Q. Would you tell the Court the amount of head room in the lower hold where Swanson fell?

A. It was after he went down, I would say it's—it was this high (indicating) up to the top of the hatch cover.

Q. About seven feet? A. Eight feet.

Q. What would you say the—or—well, on Plaintiff's Exhibit 2-C, this is one of the boards that you found in the hold; is that right?

A. Yes, sir.

Q. Hatch covers you found in the hold?

A. Yes, sir.

Q. Do you know whether that was the one that Mr. Swanson stepped on or do you know which one?

A. I'd say—it's quite hard to say which one he stepped on, but it had to be the one—I'd say he stepped on the [45] one that was under him at the time.

Q. Which one was under him, or do you know?

A. Well——

Q. Actually, Mr. Ferraris, when the two boards——

A. Actually these pictures both show the hatch

(Testimony of Edwin Ferraris.)

covers, and I know these photographs—it would be hard to say—just to say which one, and as to—I just couldn't say.

Q. 2-B, what I was going to say, when the covers were brought up to the 'tween deck, the first one was under Mr. Swanson, and then this one (indicating)?

A. No; I couldn't pick them out. Now, the first one that came out was the one that—well, the first one—well, John would have to say which was the first one because he got down there and handed them up.

Q. You don't know which one it was?

A. These are the two that were down there.

Q. Would you say—just look at the corners of that—

A. Yes.

Q. What would you say the height above the flat part of any one corner would be?

A. Above the ground?

Q. Yes.

A. Well, if I—they look like they're about—this one here (indicating) looks like it's about three inches above the ground, and this one here looks like it was [46] about two inches.

Q. Could I have those back?

(Photographs handed to counsel.)

Q. Had you or any one of the gang made any complaints of those covers to any of the officers or anyone representing Matson or Oceanic?

(Testimony of Edwin Ferraris.)

A. We have since—you mean at this particular time?

Q. Before the accident.

A. Before the accident, made the complaint to the gang boss and the walking boss, I imagine this was as far as it went. I don't think there was any officers there.

Q. Those men worked for the stevedoring company; is that correct, the gang boss and the walking boss, is that correct?           A. Yes.

Q. Were you with the entire gang when you went to work that morning, Mr. Ferraris?

A. Was I with the entire gang?

Q. Yes.

A. I was sent from the hall to work with the gang.

Q. Was Mr. Swanson there?

A. No; I believe Swanson came later for some reason or other. I don't know just why.

Q. What was this discussion when you got down to this between deck and saw the condition down there?

A. Well, we got down there and that beam was raised, and— [47] is that the aft beam—was raised about four inches and so they, the walking boss came along and he decided that being it didn't look right and they decided to change it, to make a level deck.

Q. Who said that?

A. Well, the gang boss said to change it because that's where we take our orders from, and the gang

(Testimony of Edwin Ferraris.)

boss transferred the order to the walking boss, and the walking boss says to change it, so we changed it.

Q. What was this about covering the opening with lumber?

A. Well, the reason of that was to make darn sure that no more of these beams would stick out under us.

Q. Were you going to cover it with lumber originally, even before you lifted the two beams?

A. No.

Q. You weren't?

A. No; that came in after we decided it was safer, and they decided to cover it with lumber to make it safer, an extra safety precaution.

Q. How would that lumber make it safer?

A. Well, you wouldn't have to step on the hatch covers, you step on the lumber and the lumber is across all the beams, and you don't easily step through with a solid deck of lumber.

Q. You don't have to step on the hatch covers of steel; [48] is that correct? A. Definitely.

Q. Is that correct? A. Yes.

Q. Now, you say you were standing at a position aft; is that correct? A. Yes.

Q. And to your recollection, hatch covers 1, 2 and 3 were in place? A. 1, 2, 3, yes.

Q. Is that right? A. Yes.

Q. And Mr. Swanson and Mr. Uskoski were bringing the covers from the point at the lower left-hand side there; is that correct? A. Uh-huh.

Q. Was Swanson leading? A. Yes.



(Testimony of Edwin Ferraris.)

Q. And before we go any further, that 1, 2 and 3 were on, where would they put the next one?

A. I would say it would go where 4 was.

Q. That's the way you usually covered up; is that correct?

A. Yes; we cover across; that's right.

Q. Well, would you put in 4 first?

A. No. [49]

Q. Were you covering upon the port side over there?

A. I can't remember; we could have had our side done or something. I was kind of watching. I wasn't doing anything, I know that. I was just watching.

Q. You didn't see what happened to the hatch cover number 3, as to the position on the beam or flange or catch or anything?

A. Before the accident?

Q. Yes.

A. No; I wasn't paying any attention.

Q. You just saw the board go and——

A. Yes; he stepped and he was gone, that's all.

Q. Now, how did Mr. Swanson fall? Did he fall over the aft beam?

A. That's what I say, he just went so fast, he just actually disappeared ahead of me. He just was gone, it was fast, he went—I didn't even see him—I didn't even see him stagger. I was looking there and the next thing I knew he was gone, and I looked down and there he was. I hesitated. I looked down at him and he didn't move.

(Testimony of Edwin Ferraris.)

Q. Mr. Ferraris, did you see any—oh, it might have been either the board or hatch cover number 3, and the one they were holding——

A. Did I what?

Q. Did you see whether that reached the bottom before [50] Mr. Swanson or anything like that?

A. Number 3?

Q. Yes.

A. No; I didn't; everything happened too fast.

Q. Was he laying on the hatch cover?

A. Yes; he was across it, his middle, and he was on his side and faced aft laying athwartship, kind of in a bent-knee position.

Mr. Roberts: I think that's all.

#### Further Cross-Examination

By Mr. Wood:

Q. Mr. Ferraris, just a few questions. The counsel here just asked you, I thought, maybe I misunderstood him, whether the plan was to cover up the openings with the lumber, but you were going to cover up the whole hatch with lumber, weren't you?

A. Oh, yes, sir.

Q. And that was decided on before the accident?

A. Yes.

Q. After the beams were transposed and the thing was level, then the plan was to put the hatch covers in place and floor off the whole thing with lumber? A. That was the plan.

Q. That was the order of the gang boss?

(Testimony of Edwin Ferraris.)

A. Yes.

Q. And when the beams were transposed, they were level [51] and all the beams were in good condition, weren't they? A. Yes.

Q. And after the accident, was that plan carried out, that they did floor off with lumber?

A. Yes; that's where the picture comes into effect there, that one picture.

Mr. Wood: That's all; thank you.

### Redirect Examination

By Mr. Morrison:

Q. You speak of a raise on the end of one hatch cover, you estimated of three inches, and the next one about two. Is that the bow in them?

A. Yes; I'd say that they were bowed like that.

Q. They were bowed like that?

A. They act like a seesaw, anyway.

Q. Like a what?

A. Well, they act like a seesaw.

Mr. Morrison: That's all.

### Recross-Examination

By Mr. Roberts:

Q. Do you know whether all the hatch covers in this particular 'tween deck, number 3 hold, were of the same size?

A. Well, they should have been the same size because the distance between all the beams should have been the same; that's about all. [52]

(Testimony of Edwin Ferraris.)

Q. But you don't know, do you?

A. I didn't measure them; no, sir.

Q. And is there any way in which these hatch covers could be replaced without walking on them, couldn't you slide them over from the side?

A. Well, on those wood ones you could, but on the steel ones, usually if they were cupped they probably would slide under each other.

Q. But you could slide them, couldn't you?

A. Oh, not those; they were too badly bent.

Q. You think this one here on Plaintiff's Exhibit C is badly bent?

A. That's a defective one; yes, sir.

Mr. Roberts: I think that's all.

Mr. Morrison: Would you not still have to walk on them, though, to place them?

The Witness: Yes; you got to get out—if one was to stop when you got it down in there as it was sliding, you would have to go out in there and pry it loose and get it moving again.

Mr. Morrison: That's all.

(Witness excused.)

Mr. Morrison: Call Mr. Raanes. [53]

JOHN RAANES

produced as a witness on behalf of the plaintiff and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Morrison:

Q. What is your name, please?

A. John Raanes.

Q. Where do you live?

A. 3536 Northeast 60th.

Q. And——

The Court: One of the gentlemen didn't understand your name.

Mr. Roberts: What did you say your name was?

The Witness: John Raanes, R-a-a-n-e-s (spelling).

Q. (By Mr. Morrison): You are a longshoreman, are you not? A. Yes.

Q. And were you on this gang on the day this accident happened? A. Yes.

Q. Did you see the accident?

A. No, sir; I didn't see it.

Q. You did not. Did you go down in the hold after, immediately after this accident?

A. I went down in the hold after the accident; yes, sir. [54]

Q. And did you hand up these two hatch covers?

A. Yes, sir.

Q. And what was the condition of those two hatch covers that you handed up?

(Testimony of John Raanes.)

A. They were bent quite badly.

Q. Both of them? A. Yes, sir.

Q. And were you around there when the pictures were taken or not?

A. Yes; I know where I was when the pictures were taken, I was around there.

Q. Do you recognize this picture as the covers you were handing up (indicating)?

A. Well, they look like the covers.

Q. They look like the covers?

A. Yes, sir. Look like them.

Q. Did you know Swanson before this accident?

A. I worked with him quite a few times; yes, sir.

Q. You worked with him quite a few times?

A. Yes; in the same gangs.

Q. What kind of worker was he?

A. He was a good worker.

Q. What was the condition of his health?

A. Well, as far as I could see he was in good health at all times when I worked with him. [55]

Q. Have you seen him since the accident?

A. No, sir; not until today.

Q. Not until today? A. No, sir.

Q. Do you notice any change in his general appearance in looking at him today?

A. Yes; I do.

Mr. Morrison: You may cross-examine.



(Testimony of John Raanes.)

Cross-Examination

By Mr. Roberts:

Q. You didn't see the accident, Mr. Raanes?

A. No; I had my back turned.

Q. Pardon me? A. I had my back turned.

Q. Where were you in the 'tween deck?

A. I was there covering up the other end of the hatch.

Q. You were up in the forward part of the hatch? A. Yes.

Q. Were you covering up this, too?

A. Yes, sir; they were covering up.

Q. Were you one of the longshoremen that was actually covering? A. Yes, sir.

Q. Did you see any hatch covers like these that you picked up from the bottom of the hold? [56]

A. Like those, yes.

Q. And the hatch covers that you were replacing, were these the same ones that you took off when you originally uncovered and changed the beams?

A. They were the same hatch covers; we had no others to put on.

Q. Do you know whether the hatch covers on this particular opening are all the same size and width and dimension?

A. I never measured them; we assumed that they were the same size as those steel hatches.

Q. How about the deck above, would they be the same size, or do you know? A. I don't know.

Q. Do you know whether there is any possibility

(Testimony of John Raanes.)

that those hatch covers had been mingled or switched with the after hatch covers?

A. Possibly they could be switched, I don't know; it could be switched.

Q. When you work on one of these ships, Mr. Raanes, on the ones that have steel hatch covers, are there or are there not any spare hatch covers in the wings that the men leave around?

A. Yes, sir; in the wings, yes, sir.

Q. Do you know where that ship had come from prior to coming to Portland? [57]

A. Well, no, not in particular except what I heard.

Q. You had your back turned at the time and you don't know what happened; is that correct, or you didn't see Mr. Swanson——

A. I didn't see him go down; no, sir.

Q. Mr. Raanes, were you down there when you had this conference regarding the hatch covers?

A. Yes, sir.

Q. What was the subject of that?

A. Well, we could all see the beam was out of place and we decided to put it in its right place.

Q. How did you know which was the right place?

A. Well, we discovered that one of the beams, why, another beam was out of place and didn't quite fit in there, so we decided that that's where the after beam belongs.

Q. Did you actually measure the strongbacks?

A. No; I didn't, at least.

(Testimony of John Raanes.)

Q. You didn't, yourself?           A. No.

Q. Who gave the order to switch the two beams?

A. Well, now, that I couldn't say who actually gave the order for that.

Q. Was the walking boss in the hold at that time?

A. That I wouldn't know. It seems to be a general practice when we decide on something, somebody says, "Well, let's [58] change this beam," and we change them.

Q. Do you know whether the conference that you had down there was to the effect that even if you'd have switched the beams, you're still going to cover the hatch opening with lumber before you work on it?

A. That's the understanding because the hatch boards were so badly bent, and for my part, I didn't like to be walking on them.

Q. Longshoremen don't, as a rule, like to work on steel hatch covers?

A. No; for my part, I don't like them. In fact, I am scared of them.

Q. All right. Is it possible to bend them back?

A. It seems like they won't bend back again.

Q. All right. You don't have that trouble with wood?

A. Not so much; some wood hatch covers are warped, too, but not nearly as bad.

Q. You have trouble with those coming apart?

A. Pardon me?

(Testimony of John Raanes.)

Q. You have trouble with those just coming apart?      A. Yes.

Q. By the way, what do the fellows on the water front, the longshoremen—do they have any set retirement these days, or what age do they retire at?

A. What age do they retire at? [59]

Q. Yes.      A. 65.

Q. How long have you been on the water front?

A. Approximately 25 years.

Q. Have you worked on the Ventura before or any of these C-2 types?

A. Well, I couldn't place it; I assume that I have worked on them; I worked on quite a number of ships.

Q. You worked on them, at least, with steel hatch covers?

A. Yes; I worked with steel hatches on other ships.

Q. Similar types of hatch covers before this accident?      A. Some similar, yes.

Q. And these crossbeams or strongbacks, whatever you want to call them, do you know what that ledge is, the thickness of the ledge that the hatch cover rests on?      A. Well, two or three inches.

Q. How about the ledge around the hatch coaming itself?

A. That's approximately the same width.

Q. And how—about how high would you say the center of the strongback is; is it about the same height as the hatch cover?

A. Yes; about the same.

(Testimony of John Raanes.)

Q. These metal hatches, how thick would they be?      A. How thick?

Q. Yes. [60]

A. I would say about a couple inches or so.

Q. How much would you say that they weighed, Mr. Raanes?

A. Oh, that's hard to say. I would guess at around between 30 or 40 pounds.

Q. You need two men to handle them comfortably?

A. Well, it's not impossible. I have no trouble lifting them out of the hatch, but it's impractical to handle them.

Q. I am handing you Plaintiff's Exhibit 2-B. Are all those hatch covers like that, insofar as the handles are concerned, there is a handle at each corner?      A. Yes.

Q. And what is that handle made of, just a hole in the cover with a bar across it?

A. That's right; yes.

Mr. Roberts: I see. That's all, Mr. Raanes.

Mr. Wood: No questions.

Mr. Morrison: That's all.

(Witness excused.)

The Court: It's about noon. 1:30 too early?

(No response.)

The Court: All right, 1:30.

(Whereupon, a recess was taken until 1:30 p.m. of the same day.) [61]

## Afternoon Session

(Court reconvened, pursuant to adjournment, at 1:30 p.m., and proceedings were resumed as follows.)

(Whereupon, a document was marked Defendant Matson's Exhibit 56 for identification.)

The Court: All right, proceed.

Mr. Morrison: Call Mr. Swanson.

## ALBERT SWANSON

produced as a witness on behalf of the plaintiff and, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Morrison:

Q. Your name, please?

A. Albert Swanson.

Q. Are you any relation to the plaintiff?

A. None whatsoever.

Q. And by whom are you employed?

A. Oh, the Water Front Employers.

Q. What is the nature of your work?

A. I am a winch driver.

Q. Were you present the day of the accident?

A. Yes, sir.

Q. You didn't see the accident? [62]

A. I didn't actually see it happen.

Q. Where were you at the time?

A. Well, I was taking the spreaders off the other



(Testimony of Albert Swanson.)

hook. We put that strongback in and I walked up to the deck load and was unhooking the spreader for the other fellow, my partner.

Q. You were up on the upper deck at the time?

A. Yes.

Q. Did you go down there afterward?

A. No; I didn't.

Q. And did you have occasion on that day, after the accident, to look over these hatch covers?

A. I could see the hatch covers before they took the strongback out of there.

Q. What was that?

A. I could see the hatch covers before they took the strongback out of there.

Q. You were present and helped move the strongback?      A. I took the strongback out.

Q. You took it out?

A. Yes, and put the other one in.

Q. What were the condition of those hatch covers?

A. Well, they didn't look good from the deck.

Q. Explain that.

A. Well, they looked like they didn't fit good, they didn't [63] look like they fit good, it's pretty hard to see where we are, but it looked like they just didn't fit level. You could see that.

Q. Now, are these metal hatches used on many of these ships?

A. I believe there's only two ships come into Portland and have these metal hatches, and that's the Matson Alameda and the Ventura is the only

(Testimony of Albert Swanson.)

two that I can remember, outside of the Grace Line used to have them—wait, it was the Moore-Mack, it wasn't the Grace Line.

Q. Used to have them? A. Yes.

Q. Do they have them any longer?

A. No, sir.

Q. And the only two you know of——

A. That's the only two that I can remember.

Q. That come into Portland here at the present time with those steel hatches?

A. That's the only ones I know of.

Q. Did you know Guy Swanson before the accident?

A. Yes; I knew him pretty well, I'd say.

Q. What kind of a worker was he?

A. Good worker.

Q. And how was his health as far as you know?

A. Good, as far as I knew; he was well; he always ate a [64] big meal and always got around pretty good.

Q. What kind of a man was he? Was he a man of a jovial type? A. I beg your pardon?

Q. Was he a jovial-type person? A. Yes.

Q. Have you seen him since the accident?

A. Yes. I was at the hospital, I think, three times to see the man, then I seen him twice after that at the hall.

Q. You have seen him about twice then down at the hall?

A. I seen him last summer one time. I didn't

(Testimony of Albert Swanson.)

stop to talk to him. He was at the hall, but I didn't stop, I was driving.

Q. Now, I am not going to refer to the times, the occasions you saw him at the hospital, but on these occasions that you have seen him since he left the hospital, have you noticed anything different?

A. Yes; I'd say there was a lot of difference.

Q. What is that difference?

A. Well, he doesn't talk the same or act the same. He has got kind of a stare in his eyes.

Q. He has got a what?

A. Kind of a glare in his eyes, I'd say.

Q. Did he have that before?

A. I can't remember it. [65]

Q. You say he talks different?

A. Yes, he does. He is not the same man.

Q. He is not the same man?

A. No. I'd say he was about half the man he was before.

Q. And you see a change in his mental makeup?

A. Yes; I would say so.

Mr. Morrison: Cross-examine.

### Cross-Examination

By Mr. Roberts:

Q. What was your job in the gang, Mr. Swanson?      A. Winch driver.

Q. Oh, and you were on deck all the time; is that right?      A. Yes, sir.

Q. Two decks above the 'tween deck?

(Testimony of Albert Swanson.)

A. Well, these winches I had ahold of that day were built up on the next deck above the main deck.

Q. You mean to say that you can see whether the hatch covers were raised or not at one particular strongback from that distance?

A. You could see the strongback was raised, the one we took out, and the hatches wasn't.

Q. How high were you above this deck?

A. Oh, I don't know, I didn't measure it. I'd say 20 feet, maybe.

Q. 20 feet, maybe, from the main deck down to this 'tween deck? [66]

A. Something like that; it's not much more than that.

Q. Well, you had to go through two decks, didn't you, to get down there——

A. I can't hear you.

Q. You had to go through two decks?

A. We went down one deck—two decks.

Q. And the 'tween deck was the next one?

A. Yes.

Q. How high would you say the strongback was up?

A. Well, I couldn't tell from up above, you could see it was sticking up. I wouldn't dare say.

Q. You—do you know which strongback was higher than the rest?

A. Yes; you could see that from the deck, the one was higher.

Q. And which one?

A. It was the after strongback, I think it was

(Testimony of Albert Swanson.)

number 7; there are seven strongbacks in those C-2's.

Q. How long have you been driving winches on the water front, Mr. Swanson?

A. Well, I don't know; it's going on—I started driving winches during the '34 strike.

Q. And on this occasion did you uncover right down from the main deck?

A. Yes, sir; we took the pontoons off. [67]

Q. I see. Was Mr. Swanson around, the other Mr. Swanson?

A. Oh, yes; he was there.

Q. And then he got down to the 'tween deck, the lower 'tween deck in number 3?

A. We had uncovered the upper 'tween deck.

Q. What?

A. We had uncovered the upper 'tween deck.

Q. Then you got to the lower 'tween deck?

A. Then we went to the lower one.

Q. And this is where you saw this raised strong-back?

A. Yes.

Q. Were you down there at this conference the men had, did you go down in the hold and have this conference with the men?

A. No, sir; we did not.

Q. You stayed up on deck with the winches?

A. We stayed up on deck.

Q. Do you know whether the walking boss was down there?

A. I seen him down there, yes.

Q. Who was the walking boss?

A. Glenn Burke.

Q. Does the supercargo go down?

(Testimony of Albert Swanson.)

A. I don't even remember who the supercargo was.

Q. Were there any Matson ship officers down there?      A. I don't know. [68]

Q. Do you know whether any complaints were made to any of the ship's officers?

A. I wouldn't know that.

Q. Pardon me?

A. I wouldn't know that because I wasn't down in the hold and don't hear everything that goes on.

Q. Have you, yourself, uncovered, Mr. Swanson?

A. Several times, yes. We had to uncover these Moore-Mack ships years ago, and I had a gang and we fought every time they came in with the steel hatches; they weren't safe.

Q. Mr. Swanson, who gave you instructions to switch the two strongbacks?

A. They just said to hook onto it; we are going to change the strongbacks.

Q. You say that you did that?

A. I took the one out and my partner took the other one out and we just switched ends. We had both ends of the ship rigged.

Q. In order to do that, how many sections did the men down there uncover?

A. Well, they uncovered one strongback, had to uncover two sections.

Q. Did you see them do that?      A. Yes.

Q. Did you see what they did with the hatch covers they [69] removed?



(Testimony of Albert Swanson.)

A. Well, they either put them aft or in the wing. I didn't pay attention.

Q. Do you know whether they put any hatch covers in the wings?

A. No; I wouldn't know that.

Q. Were all the hatch covers the same size?

A. I'd say they were.

Q. The forward hatch covers were the same size as the after hatch covers?

A. I think they run about four and a half feet, if I remember right.

Q. You didn't actually see the accident?

A. No; I didn't. I was taking the spreaders off the other hook at the time the accident happened. The guy hollered there was a man in the hold; they wanted a board.

Q. After the accident and the covers had been replaced, did the men work on the covers at that time; after the accident and when the openings were being covered, did the men work on it or did they cover it with dunnage or lumber?

A. We covered it with dunnage, they restripped her both ways.

Q. Was it dunnage, in fact, or was it some of the cargo that was to be loaded in the wings?

A. Well, that I don't know. [70]

Q. Weren't you loading it?

A. Well, there was two-inch lumber they laid on the hatch.

Q. What were you loading at this time?

A. I don't remember.

(Testimony of Albert Swanson.)

Q. You don't know. Was the length of the lumber right across the hatch opening?

A. Yes; everything was open in the wings; we put the lumber in the wings.

Q. And you went down there during this conference?      A. No; I didn't go down, I said.

Q. Do you know whether the men down there made any measurements of the strongbacks?

A. No; I wouldn't know. I know the strongback, the one I took out didn't fit, and the one I put in did.

Q. How do you know that?

A. Well, you can see it. It went down in.

Q. Did you check the slots where the strongbacks were to lay on?

A. No; I didn't check it.

Q. Do you know whether there was any debris or anything in there?

A. I couldn't check it, not from where I was.

Q. You don't know whether those slots were squashed in or anything? [71]

A. No; I don't.

Q. Are those beams in those particular hatch openings interchangeable?

A. The beams, they are on most ships, yes.

Q. Were they on this one?

A. I don't know; we changed number 1 and number 7 and it fitted, it fitted right. Sometimes your hatch—you get something heavy you're putting on it, and the beams might just make a difference in whether you get it in or not.

(Testimony of Albert Swanson.)

Q. Even though they were constructed to be interchangeable?      A. Yes.

Q. Did you have any social contacts or anything of that nature with Mr. Swanson before the accident?      A. Social?

Q. Yes; did you go out?

A. No; only thing we went out to dinner a lot of times together; we went out and I always went to dinner when he was on the ship with us.

Q. Would you say he was a quiet type of individual?

A. Well, he was a—I don't know what you mean by "quiet."

Q. Well, would he be boisterous?

A. No; he wasn't. He did a lot of talking but then a lot of us do that. I never seen him, I never seen the man take a drink as long as I knew him.

Mr. Roberts: I think that's all, Mr. [72] Swanson.

Mr. Wood: No cross.

Mr. Morrison: That's all.

(Witness excused.)

Mr. Morrison: Call Mr. Lundstrom.

## JOHN D. LUNDSTRUM

produced as a witness on behalf of the plaintiff and, being first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Morrison:

Q. May it please the Court, this gentleman has a little difficulty with his hearing.

The Court: All right.

Q. (By Mr. Morrison): Can you hear all right now?

A. Yes.

Q. What is your name?

A. John D. Lundstrom.

Q. And where do you live?

A. Gresham.

Q. And what do you do?

A. I am a longshoreman.

Q. What type of work do you do?

A. Supposed to be gang boss.

Q. Were you a gang boss at the time of this accident?

A. Yes.

Q. And that's the particular gang that Mr. Swanson was with? [73]

A. Yes.

Q. Did you see the accident?

A. Yes; I did.

Q. What did you see?

A. I seen him fall down in the hold.

Q. You saw him fall?

A. Yes.

Q. About how far away were you from him?

A. Well, I was passing one of the hatches.

Q. In distance in feet, about how far?

(Testimony of John D. Lundstrom.)

A. Oh, I imagine—I don't know how long the hatch was—oh, I imagine between 15 and 20 feet.

Q. Was he in the act of falling when you saw him?  
A. Yes.

Q. And did you go down in the hold afterward, did you go down where he was in the hold?

A. No; I didn't go down.

Q. About how far did he fall?

A. Oh, around seven—eight feet.

Q. Seven or eight feet. Were you there when they took him out?  
A. Yes.

Q. Did you help them take him out?

A. They took him out in a casket.

Q. One of these baskets? [74]

A. Basket, I mean, not a casket. In a basket.

Q. Now, did you observe these hatch covers there, the condition of them that day?

A. Yes.

Q. What was the condition of these hatches?

A. Just all bent out of shape.

Q. All bent out of shape?  
A. Yes.

Q. And afterwards did you lay boards on there before they laid the lumber?

A. After we put the hatch covers back, I laid a floor of lumber on top of them.

Q. Why did you do that?

A. To hold them down so they wouldn't jump up again.

Q. To hold them down so they wouldn't move out of place?  
A. Yes.

(Testimony of John D. Lundstrom.)

Q. Did you know Mr. Swanson before the accident?      A. Oh, yes.

Q. And what kind of a worker was he?

A. He was an awful good worker.

Q. Good worker?

A. (Witness nods head.)

Q. Habits all right?      A. Yes.

Q. What was the general condition of his health; was he [75] in good health?

A. Yes; he was in good health; he was an awful good worker.

Q. Have you seen him since the accident?

A. Yes; I have.

Q. About how many times?

A. Well, I went up there three times to the hospital, then I seen him once last spring at his apartment.

Q. You saw him last spring; did you talk to him there?      A. Yes.

Q. Did you notice any change in him?

A. Yes; there is a big change in that man.

Q. What do you notice, what kind of a change?

A. Well, he doesn't act like he used to.

Q. Do you notice any change in his personality?

A. Yes; there is.

Q. Does he talk the same as he used to?

A. No.

Q. Does he talk about the same things that he used to?      A. That's right.

Q. Now, do you notice any difference in his appearance?      A. Oh, yes, sir.



(Testimony of John D. Lundstrom.)

Q. What did you notice on that?

Q. Well, he didn't look right to me.

Q. He didn't look right? [76]

A. (Witness nods head.)

Mr. Morrison: You may cross-examine.

Cross-Examination

By Mr. Roberts:

Q. Mr. Lundstrom, Mr. Swanson is about the same weight, isn't he, as when he was working?

A. You better come here. I didn't hear you.

Q. Mr. Swanson is about the same weight, isn't he; same weight as what it was on the water front?

A. Well, he looks about the same, same weight.

Q. About the same weight; he is not as talkative; he doesn't talk as much as he used to; is that it?

A. No.

Q. What would you say was the matter with him?

A. I don't know what is the matter with him.

Q. You don't know? A. No; I don't know.

Q. Mr. Lundstrom, you were in charge of the gang that particular day; is that correct?

A. Yes.

Q. There were 13 men in the gang; is that right?

A. Thirteen, yes.

Q. And with yourself making the 14; 14 with yourself? A. No, sir; 13 and myself.

Q. I see. And you have a steward, a safety steward; do [77] you have a safety man there, or steward, who takes care of the safety?

(Testimony of John D. Lundstrom.)

A. Yes; we have one on the water front; yes.

Q. Who was that in the gang; what was his name?

The Court: You are not close enough.

The Witness: Not in the gang.

Q. (By Mr. Roberts): You don't have one in the gang? A. No safety man in the gang.

Q. And you were in charge of the gang; is that right? A. Yes; I am.

Q. And who did you get your orders from, sir?

A. From the walking boss.

Q. I see. When you went to work on the morning of the accident, did you have to completely uncover number 3 hatch? A. Yes.

Q. Was that correct?

A. (Witness nods head.)

Q. And you uncovered all the way down to the lower 'tween deck? A. That's right.

Q. And you had some men down there?

A. Yes.

Q. What were you to load that morning?

A. We were to load lumber.

Q. And whereabouts were you going to [78] stow it? A. In the wings.

Q. In the wings of the lower 'tween deck?

A. Yes; lower 'tween deck.

Q. In order to store it in the wings, you had to use the hatch openings, you had to walk out on the hatch boards or hatch covers? A. Yes; sure.

Q. Did you start to work on the—did you ever start to work? A. No.

(Testimony of John D. Lundstrom.)

Q. Now, will you tell us why not?

A. When we came down there, that number 7 beam stuck up about four inches, four or five, something like that, and then I started looking around and discovered that number 1 beam was a little shorter, so I suggested we uncover both ends and change the beams around.

Q. Now, Mr. Lundstrom, before we go any further, did you and all the men in the hold discuss it just generally as to the safety factors; did all your men in the hold discuss the safety factors; they wouldn't work on it in that condition; is that correct?

A. That's correct.

Q. And did you discuss the matter with the walking boss?

A. Yes.

Q. And this was Mr. Burke?

A. Yes. [79]

Q. What did Mr. Burke say?

A. Well, he left it up to us to do whatever we pleased.

Q. I see. Well, isn't it a fact that he left the hold himself to go and get some dunnage or lumber?

A. He left the hold and went up on deck, and I don't know where he went. He went up, left the hold, anyway.

Q. Did he tell you what he was going to do?

A. I suggested that we put a floor of lumber on there.

Q. You had?

A. No; he did.

Q. And then he left it up to you as to whether you wanted to switch the strongbacks?

A. Yes.

(Testimony of John D. Lundstrom.)

Q. Why did you decide to switch the strongbacks?

A. Because we didn't think it was safe the way they were.

Q. Now, not talking about the strongbacks, but how were the hatch covers?

A. All bent out of shape.

Q. All of them? A. Well, most of them.

Q. And you were going to cover up the entire opening and the hatch cover with lumber, irrespective, even though you had switched the strongbacks in position; is that correct? A. Yes.

Q. And you eventually worked with that dunnage there? [80]

A. We did; we had a floor almost six inches thick.

Q. The entire length of the opening?

A. Well, there were some places that it didn't cover, it was too short, but some was long enough.

Q. And I understand that you turned some of the hatch covers upside down? A. Yes.

Q. Did the accident occur when Mr. Burke was out of the hold and away?

A. No; he wasn't there when the accident happened.

Q. He wasn't there? A. No.

Q. At whose orders were the strongbacks switched?

A. We took number 1 beam back to number 7 and took number 7 back to number 1.

Q. And was that done at your orders?

(Testimony of John D. Lundstrom.)

A. Yes.

Q. Was it done at the order of Mr. Burke or just your own?

A. Well, I don't know if it was by his order or not, but I done it.

Q. I see. He had left it up to you?

A. It's up to me to see that it was safe to work.

Q. And did you discuss—had you discussed with Mr. Burke whether to switch those beams before he left the hold?

A. I don't remember whether I did or not. [81]

Q. I am trying to get from you, Mr. Lundstrom, if you can remember, exactly what you had decided regarding switching the two beams, whether he had left it up to you and the gang or whether he told you to switch them?

A. Well, he left it up to us, to the gang, to do it.

Q. You didn't want to do it?

A. No; because we wouldn't work on the deck in that unsafe condition.

Q. So you were asking to switch the beams and put the lumber on top; is that correct?

A. We switched the beams and then we put the lumber on.

Q. Would you have put the lumber on top without switching the beams?

A. No; we wouldn't put the lumber on without switching the beams.

Q. Why not?

A. Because they was going to lift it up at one end and then put it down at the other end.

(Testimony of John D. Lundstrom.)

Q. Well, wouldn't the lumber put into the hold drive the beam into its proper place? A. No.

Q. No? A. I don't think so.

Q. I see. So you'd have to switch the beams anyhow before putting the lumber on; is that correct?

A. Certainly. [82]

Q. You didn't actually see the accident itself, did you? A. What?

Q. You didn't see the accident?

A. Yes; I saw him fall in there.

Q. Whereabouts were you standing on the deck?

A. I imagine about 15 or 20 feet from it.

Q. Mr. Lundstrom, will you go over there and put a big L where you were standing?

A. Yes, sir.

Q. Do you know in fact how many covers had been replaced at the other end when the accident happened? A. What is that?

Q. How many hatch covers had been replaced?

A. Well——

Q. Do you in fact know how many hatch covers had been replaced before the accident occurred; do you know how many hatch covers had been replaced at the after end of the opening before the accident occurred? A. No.

Q. You don't? A. No.

Q. You didn't see the hatch covers that fell into the hold——

A. Wait a minute now—did I see how many hatch covers there were before the accident happened——



(Testimony of John D. Lundstrom.)

Q. That's right. [83]

A. He had three on there.

Q. Which three?

A. The two on the first and then one on the second one and three—it can't be the fourth one.

Q. I see, and he was holding the fourth one; is that correct?      A. That's right.

Q. Mr. Uskoski's diagram is substantially correct, then; is that correct?

A. That's correct.

Q. And the one that he was standing on was number 2; is that correct?

A. Well, I believe so.

Q. Did you actually see that number 2 fall?

A. Yes.

Q. You did actually see it; where was it when you first saw it?      A. The hatch cover?

Q. Down in the——

A. Yes; down in the hold.

Q. Did you see it resting on the crossbeam?

A. I don't think I did; one went down in the hold with Swanson when he fell in.

Q. That's the——

A. The cover went with Swanson. [84]

Q. How many hatch covers went into the lower hold?      A. Well, I couldn't tell you that.

Q. Were there any other hatch covers already down there before the accident?

A. Down in the hold?

Q. Yes.      A. I don't believe so.

(Testimony of John D. Lundstrom.)

Q. Do you know where this ship was worked before; the last port?

A. They told me it was down at Coos Bay.

Q. Who usually covers up a ship like this and replaces the beams and the hatch covers; who usually does that, the longshoremen?

A. The longshoremen do; yes.

Q. All up and down the coast? A. Yes.

Q. Now, Mr. Lundstrom, did any of your men actually measure the crossbeams?

A. No; I don't think they did.

Q. Well, how did you know that the number 1 was shorter than number 7?

A. I could see it in the slot there when I looked. I saw a little opening.

Q. Oh, you say you saw a little opening at the number 1 slot? [85] A. Yes.

Q. And no opening at all in the number 7?

A. It wouldn't go down; it was very tight.

Q. I see. Do you know whether these crossbeams are, in fact, the same length?

A. Well, that I can't answer you, either.

Q. You don't know; you don't know whether you can interchange them, do you; by that, I mean you—— A. Sometimes.

Q. Can you put number 7 where you put number 1, and put number 2 where you put number 3?

A. Well, most of them are marked.

Q. Were those beams numbered?

A. That I can't answer you.

(Testimony of John D. Lundstrom.)

Q. How long have you been working on the water front, Mr. Lundstrom?

A. I been there 37 years.

Q. I see. When your men replace or cover up this type of a hatch with steel hatches, can you put one hatch cover on at a time and then stand on the coaming edge and slide another one along so that it slides all the way across?

A. What do you mean?

Q. When you cover up, instead of getting on the hatch cover itself in the process of covering, what is there to stop you from standing on the edge of a coaming, and [86] putting the first one on and then sliding the next one?

A. Well, we try to walk out with them.

Q. Why do you do that?

A. Well, sometimes they're so tight you can't slide them, you got to put them on one at a time.

Q. But you can slide them?

A. Sometimes you can.

Q. Can you stand on the coaming and slide them?

A. The only time you can slide them is on the first deck.

Q. Why can't you on the lower deck?

A. You got to bend out too much for that, you got to take them out.

Q. That's the only way you think you can do it?

A. Yes.

Q. Because you have to bend over too much?

A. That's right.

(Testimony of John D. Lundstrom.)

Q. Because of the coaming; is that the reason?

A. That's right.

Q. Because it's a little more uncomfortable that way?

A. I think it is.

Q. Although it would be safer though to slide it?

A. (No response.)

Q. Wouldn't it be safer to slide it from the hatch coaming?

A. If you can, yes. [87]

Mr. Roberts: I think that's all, Mr. Lundstrom.

#### Further Cross-Examination

By Mr. Wood:

Q. I will stand here so you can hear me.

A. You got to be closer to me.

Q. Am I on your best ear; which is your best side?

A. This (indicating).

Q. All right, I will stay here. Now, when you went down there to work that morning and you saw these hatch beams were not in the right place, you decided to change them, did you?

A. Well, we all met, me and the whole gang did.

Q. And did Mr. Burke help you decide that; was he there?

A. Well, he left it up to us.

Q. Was he there when you were talking about it?

A. Yes, he was down there when I was talking about it.

Q. And you decided to make the change?

A. Yes.

Q. And when you made the change, then the beams were all right, weren't they?

A. Yes.

Q. Now, why did you decide to floor off?

(Testimony of John D. Lundstrom.)

A. You mean——

Q. What do you longshoremen, when you are talking about flooring off, what do you mean? [88]

A. Well, we make a floor at the time, when we lower lumber until you come head-high.

Q. Well, you were going to build a platform of lumber across this hatch, weren't you; you were going to lay lumber across the hatch?

A. We were going to lay lumber all across to hold the hatch covers down.

Q. So as to hold them down?

A. To hold them down.

Q. Was that the only reason you had, to hold them down or so that you could walk on it safely?

A. Yes, because we was afraid to walk on them the way it was.

Q. In other words, you were afraid that one hatch cover might give away with you, but if you had the boards across there, that wouldn't happen?

A. That's right.

Q. Where did you get the lumber?

A. Got it from the docks.

Q. Where? A. From the docks.

Q. Did Mr. Burke go to get it, did Mr. Burke, the walking boss, go to get the lumber?

A. That's right; we loaded the same kind of lumber all the way through. [89]

Q. I see. You took part of the lumber cargo you were loading and made a floor across the hatch?

A. That's right.

Q. To make it safer? A. Yes.

(Testimony of John D. Lundstrom.)

Q. Do you quite often do that if you find hatches are not good?

A. That's the first one I ever struck.

Q. These hatches were in such condition that you thought you ought to put the lumber on top of them?

A. That's right.

Q. Did you have any discussion with the ship's mate at any time——

A. No.

Q. ——about the condition of the hatches?

A. No.

Mr. Wood: That's all.

Mr. Morrison: That's all.

#### Further Cross-Examination

By Mr. Roberts:

Q. Mr. Lundstrom, just a little more. As I understand it, your gang would still not work, not after you switched the beams; is that correct?

A. What?

Q. Your gang wouldn't work even after you switched the [90] beams until you had covered over the openings with lumber; is that correct?

A. It wouldn't work?

Q. Your gang wouldn't work?

A. Sure; after we got the lumber down.

Q. But you wouldn't do it until you got the lumber down?

A. No.

Q. And that was because of the hatch covers; is that correct?

A. That's right.

Q. Now, did you or Mr. Burke, to your knowl-



(Testimony of John D. Lundstrom.)

edge, ever advise the ship's company about this, or the mate?

A. I don't bother the mate; that's up to the higher ups to do that.

Q. But you didn't do it yourself; is that correct? You didn't?

A. I didn't bother the mate, no.

Q. Why didn't you just quit work there until you got different hatch covers? A. What?

Q. Why didn't you just quit work until you got proper hatch covers?

A. That wouldn't be any good; they still got the same kind of hatch covers on there yet.

Q. Well, this was just a matter of working, isn't it; [91] you wanted to get to work?

A. I didn't get you.

Q. I say you just wanted to get to work as soon as you could; is that it?

A. Well, we want to start to work when we can.

Q. I see. You could have stopped work and asked for new hatch covers from the ship's officers, couldn't you, or the mates?

A. Well, if I stopped, refused to work, then I would get in a jam by refusing to work.

Q. I see. Mr. Lundstrom, so you took your problem to Mr. Burke and then you decided to remedy it yourself; is that correct?

A. Well, Burke told me to make it safe and I tried to do my best.

Q. I see, sir, and this was done as far as you know without any knowledge or at least as far as

(Testimony of John D. Lundstrom.)

you were concerned the ship's officers did not know about this?

A. The ship didn't give any orders, no.

Mr. Roberts: That's all.

Mr. Morrison: There was nothing to prevent the ship's officers from knowing the condition of these hatches, was there?

The Witness: What?

Mr. Morrison: There was nothing to prevent the ship's [92] officers from knowing the condition of these hatches, was there?

The Witness: They must have known that.

Mr. Morrison: That's all.

The Witness: Couldn't help it.

Mr. Morrison: That's all.

(Witness excused.)

Mr. Morrison: Call Mr. Fants. [93]

### JAMES S. FANTS

produced as a witness on behalf of the plaintiff and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Morrison:

Q. How do you pronounce your name, please?

A. Fants.

Q. And where do you live, Mr. Fants?

A. 7130 Southwest 37th.

Q. And what type of work do you do?

(Testimony of James S. Fants.)

A. I am now a winch driver.

Q. How long have you been doing that type of work?      A. 20 years.

Q. 20 years, and were you present on the day that this accident occurred?      A. Yes.

Q. And were you a winch driver then?

A. Yes.

Q. And did you see the accident?

A. No; I did not see the actual movement of the man in the course of falling.

Q. On that day, did you have occasion to observe the condition of the hatch covers?      A. Yes.

Q. What were the conditions of those?

A. They were very bad. [94]

Q. In what way?

A. Well, they were—these are made of quite thin metal, the top is thin and the bottom is corrugated, and they can't stand much of a jar, and in the course of loading ships they eventually all become bent and saucer-shaped and that is true with all these metal hatch covers.

Q. Are they used on many ships that come in here?

A. No; not many, and from the first day they come out, it was obvious that they were impractical and not a wise way of making hatch covers.

Mr. Roberts: Your Honor, this is the witness' conclusion, and it's already been admitted that the ships are manufactured with these steel hatches.

The Court: I don't see anything wrong with him giving his opinion.

(Testimony of James S. Fants.)

Mr. Morrison: Continue.

The Witness: I would like to say that this means quite a little to me, because I have participated in the attempt to get rid of these steel hatches, and it is—we have done everything except actually stop work and let the ships set there, which we, of course, don't like to do. It's common knowledge amongst our union people that we have all protested against them, we have used every method we could to get them removed and we have had assurances that they would be done away with. [95]

Q. (By Mr. Morrison): Well, now, let's get on to something else. Now, you don't—didn't consider them—you consider them dangerous then?

A. I do.

Q. And you say they are used on very few ships?

A. That's right.

Q. Did you know Guy Swanson before the accident?

A. Yes.

Q. Some little time?

A. I knew him ever since he came to the water front.

Q. And what kind of a worker was he?

A. Well, he is, in my opinion, a good worker and what we would refer to as kind of a spark. He was a little bit of a highball guy and he usually inspired the gang that he was working with.

Q. Now, have you had occasion to see him since this?

A. Yes; two or three times.

Q. And have you noticed any change in him?

A. Yes.

Q. What changes have you noticed?

(Testimony of James S. Fants.)

A. Well, he is not as agile in his movement around, like he did then, and he doesn't talk the same at all.

Q. Well, did you see a personality change in him?

A. Well, actually, I can't carry on a sensible conversation with him now. [96]

Q. And before that, before this accident, that did not exist?

A. He was just the same as any other person.

Q. Now, have you noticed any appearance, one witness has stated he had a glare in his eye; do you think he——

A. Yes; he doesn't have the same appearance that he did.

Mr. Morrison: You may cross-examine.

### Cross-Examination

By Mr. Roberts:

Q. You say you have seen him two or three times since the accident. When was that?

A. I have seen him around the hiring hall.

Q. How long ago was that?

A. Oh, I don't remember just what times. I think that he spends some time around the hiring hall, and I have just happened to run into him there. I haven't seen him for two or three months around the hiring hall.

Q. You haven't been in any conversations with him since this accident, have you, sir?

A. Oh, half-hour conversations.

(Testimony of James S. Fants.)

Q. You say he does not have the same appearance; is he thinner?

A. No; his weight isn't much different, I wouldn't say, but he certainly doesn't move around like an able-bodied man.

Q. Mr. Fants, you are an official of the local here? [97]

A. No; not at this time.

Q. You have been, have you?

A. Yes.

Q. And that's how you got interested in these steel hatch boards on the whole matter, wasn't it?

A. Yes; I have been very active in the union.

Q. Were you a member of the gang when this matter was discussed in the hold?

A. Yes.

Q. Were you down there?

A. No; I was on deck.

Q. You were on deck. You don't know what was discussed then, do you?

A. No; not exactly. It's common practice to fix things that are obviously not right. No one tells you to do that. Your experienced longshoreman merely proceeds and does it.

Q. Were there any ship's officers in this hold at this time?

A. I don't recall.

Q. Was any report made of the conditions of the beams, for instance, the short and the long beams to any of the ship's officers?

A. I don't recall.

Q. Do you know whether anyone in that gang or even the [98] walking boss had asked the ship's officers to switch any of the hatch covers?

A. I don't—I couldn't say definitely on that job,



(Testimony of James S. Fants.)

but I know personally that all these ship's officers are aware of the union protest from way back.

Q. These ships were manufactured with these hatch covers; weren't they?

A. I know there were many ships manufactured with them that have been replaced.

Q. Mr. Fants, were those manufactured during the war years?      A. I don't know.

Q. Well, have you any idea why there are steel hatch covers of this type as opposed to the wooden ones?      A. I imagine it was an experiment.

Q. Well, do you think it might have been a shortage of material?

A. No; I don't. I think probably these were made during the latter part of the war when steel was caught up fairly well. I don't know why they would make a steel hatch cover other than they thought possibly they would do better than wooden ones.

Q. In your experience on the water front, Mr. Fants, do you think you could replace those hatch covers, as I said, by sliding them along?

A. No. [99]

Q. Why not?

A. Because you can't bend over and touch your toes and push the weight of a hundred pounds.

Q. Do any of them weight a hundred pounds?

A. No, but you have to push more than one, you know.

Q. What do you think they would weigh, each of them, about?

(Testimony of James S. Fants.)

A. I have heard statements made here that they weigh 30 to 40 pounds, and I judge that's about right.

Q. Do you have any knowledge or idea as to about how wide that ledge is on the beam where they rest?

A. Between two and a half and three inches.

Q. How about on the hatch coaming side?

A. About the same, possibly a little less.

Q. The flange itself, how high is that above the crossbeam?

A. Well, I think it varies. I would say not over two inches.

Q. Usually about the same height as the hatch cover itself?

A. Yes, these metal hatches are thinner than the wooden hatch covers.

Q. Do these hatch covers sometimes get up on the flange itself?

A. Well, if you lay one in the place that it's supposed [100] to be, and one end rests on the beam, you'll naturally force it down or exchange it with one that will fit in there so that you can walk on it again.

Q. I mean in the manner in which you replace them, maybe you are in a hurry or something, and you didn't actually place it down in the slot?

A. Well, when we place it there, if you don't place it right, you change it to get it to fit in there right. You can't make it fit, you exchange it and get one that will fit, otherwise, you wouldn't come out and step on it.

Mr. Roberts: I see, that's all.

Mr. Wood: That's all.

Mr. Morrison: That's all.

(Witness excused.)

Mr. Morrison: Call Frank Novak. [101]

FRANK NOVAK

produced as a witness on behalf of the plaintiff and being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Morrison:

Q. What is your name, please?

A. Frank Novak.

Q. And where do you live, Mr. Novak?

A. Milwaukie.

Q. What line of work do you follow?

A. Longshoreman.

Q. How long have you been a longshoreman?

A. About 23 years.

Q. Have you ever worked with Guy Swanson?

A. Yes, I worked with him quite a bit.

Q. What kind of a worker was he?

A. Very good, very agreeable, jolly.

Q. And how was his health?

A. He was in very good health before.

Q. Was he normal or was he—would you say he was an eccentric person?

A. No, he was just one—always went ahead and done his work and was jolly about it and joshing at

(Testimony of Frank Novak.)

the rest of us. They used to like to see him come in the gang to work because everybody agreed with him. It's easy to work with [102] a fellow like that.

Q. Were you working in this gang the day of the accident?      A. No, I wasn't.

Q. How many times have you seen Mr. Swanson or talked to him since the accident?

A. I think I saw him twice in the hall, a couple times in the hospital.

Q. And during those times in the hall, did you talk to him?

A. Yes, I talked to him a little bit. He didn't have much to say and I didn't want to talk to him too much, I think it might embarrass him, so I didn't talk to him long. He seemed to be kind of down-at-the-mouth.

Q. Have you noticed any change in him?

A. Yes, there is quite a definite change.

Q. What have you noticed?

A. His appearance doesn't look the same, he must be—he used to be jolly and always a big smile on his face, and he don't carry that any more.

Q. And how does he talk; does he talk as sensible as he used to?

A. No, he doesn't. He don't talk not nearly the same as he used to. He is just a changed person, he is just down-at-the mouth, he don't know why.

Q. Have you noticed anything since on the two occasions [103] and I noticed that you talked to him today, have you noticed his conversation is a little strange?

(Testimony of Frank Novak.)

A. Yes, he just keeps talking about the same things all the time, and he kind of stares at you; he never done that before.

Q. You say now he stares at you? A. Yes.

Q. And talks about the same things?

A. Yes.

Mr. Morrison: You may cross-examine.

### Cross-Examination

By Mr. Roberts:

Q. Mr. Novak, you didn't actually see the accident? A. No, I didn't.

Q. And were you working this day?

A. I wasn't on the job, I don't know where I was that day.

Q. I see. You weren't a member of this gang under Mr. Lundstrom? A. No.

Q. How many times do you think you had seen Mr. Swanson since he has been on the water front?

A. Pardon?

Q. How long have you known Mr. Swanson?

A. Oh, eight, ten years. [104]

Q. And did you used to see him very much other than when you were on the same gang?

A. Yes, I seen him quite a bit, I have went partners with him.

Q. Pardon me?

A. I have even worked partners with him when we worked down in the hold.

Q. I mean, have you seen him at any other times other than on the ships or at the union hall?

(Testimony of Frank Novak.)

A. I don't know what you mean?

Q. Well, was he a buddy of yours, did he go out with you?      A. No.

Q. It was all during work?

A. I have ate with him and been in restaurants with him.

Q. You didn't visit one another's homes or anything like that?      A. No.

Q. It was more an acquaintance from the union?

A. That's right, he was just a union brother is all.

Q. Did he discuss very many things with you?

A. No, nothing in particular.

Q. Did you know whether he had been married or anything?

A. No, I know he was going with a girl friend.

Q. Do you know whether he had been married previously?      A. I don't know. [105]

Q. Did he discuss anything about his personal life before?

A. Yes, he told me, he discussed, I think, he used to work in the woods before he came up longshoring.

Q. Now, you say you have noticed a difference in him since the accident. In what way, the way he stares at you?

A. Yes. Well, he was just one of those guys, he'd come up to you and just talk to you and he was full of talk before the accident, and now he just—you just have to drag it out of him; if you want to talk you have to drag it out of him.



(Testimony of Frank Novak.)

Q. But he does talk to you, does he?

A. Yes, he will talk to you but not like he used to.

Q. And what he says is sensible, you can understand it?

A. Well, some of it, and some of it I wonder.

Q. You don't know what he is talking about?

A. That's right.

Q. And you say he is always talking about the same subject?

A. He keeps repeating all the time, he wishes he could go back to work and then just about things like that.

Q. Well, isn't that something you'd expect, a man that has been hurt in an accident?

A. Well, yes, but he still should talk about some better things in life than just work.

Mr. Roberts: That's all, sir.

Mr. Wood: That's all. [106]

Mr. Morrison: That's all.

(Witness excused.)

The Court: We will take a few minutes. This will be your last witness?

Mr. Morrison: This and one other. And if your Honor please, we had a doctor summoned for tomorrow morning, we might run out this afternoon. We proceeded a little faster than I anticipated.

The Court: All right.

(A short recess.)

The Court: Proceed.

Mr. Morrison: Call Mr. Swanson.

GUY W. SWANSON

produced as a witness in his own behalf and being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Morrison:

Q. Now, your name is Guy Swanson?

A. Yes.

Q. And how old are you, Mr. Swanson?

A. I was born in 1902.

Q. You will have to speak up a little louder.

A. 1902. That would make me—this is '57—I am 55.

Q. Will you speak up a little louder?

A. Well, it's hard. I can't hardly get it out. I can't [107] hardly talk loud, I don't know what's the matter.

Q. Are you a little hoarse today?

A. No, I am not hoarse, I just can't get it out.

Q. Well, speak up as loud as you can, Mr. Swanson. Are you married?      A. No.

Q. How long did you work as a longshoreman?

A. Well, I worked over 12 years.

Q. As a longshoreman?

A. Yes, I come—you know that three-week vacation, I did over 12 years. I don't know just how long.

(Testimony of Guy W. Swanson.)

Q. And what kind of work did you do before that?

A. Well, I worked in the woods and different places.

Q. And different places? A. Yes.

Q. And how far did you get along in school?

A. Well, I finished the eighth grade.

Q. And where were you born?

A. Mt. Vernon, Washington.

Q. Now, do you know about what time you reported for work on the day of this accident?

A. Yes, I even got the pad. I got the job at 7:45 at the hall, 7:45 and then I had to go to Terminal 4, and it takes you any way a half hour to go out there, so it was after 8:00 when I got there on the job, I know. [108]

Q. Were the other men working there when you reported? A. Yes.

Q. They were there when you got there?

A. Yes, I was the last one hired.

Q. Did they move those beams while you were there? A. Not when I was there.

Q. Were the beams moved before you got there?

A. I never seen any beams moved.

Q. You didn't see any moved?

A. No, I didn't see any moved.

Q. And were you the last one of the gang to get to work, did you say?

A. Yes, I was the last man hired.

Q. And who was your partner?

A. Clarence Uskoski, he was my partner.

(Testimony of Guy W. Swanson.)

Q. What type of—what kind of work then did you start doing when you got there?

A. Started covering up, putting the hatch covers on.

Q. Putting the hatch covers on? A. Yes.

Q. And do you know how many of them you had put on before this accident?

A. I don't know how many.

Q. You don't know how many?

A. No, I don't. [109]

Q. Now, how did you carry these hatches?

A. Well, you have one on each end, you know, a man at each end of the hatch cover. I'd have this end (indicating) and he'd have the other end and there is a little place, sometimes you can get your fingers in there, kind of a hole pressed in the steel and a bar across there, just enough to get your fingers in. Some of them you get your fingers in, some of them you don't. And other times you got to grab ahold of the ends, see?

Q. What were the conditions of these hatch covers? A. Well, they weren't too good.

Q. What do you mean by that?

A. They are never too good, the steel hatch covers are never level.

Q. They are never level?

A. No, they are not.

Q. And what causes that?

A. Well, if they're loading timbers and they got the timber a little heavy on one end and she comes down and the heavy end of the timber will hit the

(Testimony of Guy W. Swanson.)

hatch covers it's bound to spring them, hit them in the middle it's bound to spring them and both ends come up.

Q. And both ends come up? A. Yes.

Q. Now, were you carrying one of these hatches when this [110] accident happened?

A. Well, it happened so quick I don't even know when it happened, it happened too quick.

Q. You don't even know?

A. No, I don't even know.

Q. Have you any knowledge at all of falling down in this hold?

A. No. No, all I know is I woke up in the hospital later; that's all I know.

Q. And do you remember carrying this—do you remember carrying a hatch cover just before you fell?

A. I—well, we carried and put one in, I know, and then went back after another one and I don't remember after that.

Q. You don't remember anything after the accident?

A. No, I don't even remember a thing after that.

Q. And now, about how long did you stay in the hospital the first time?

A. The first time, it was the 9th of February when they took me to the hospital and then I got out—I have seen it at the doctor's office since, it was the 20th of March when I got out.

Q. When you got out, that's the first time you were in the hospital?

(Testimony of Guy W. Swanson.)

A. That's the first time, yes.

Q. Now, what's the first you remember in the hospital? [111]

A. All I remember is when I got out that morning, I know my girl friend, she——

Q. Were you unconscious when you went to the hospital?

A. Oh, I don't know a thing, I was dead.

Q. Do you remember when you woke up in the hospital?

A. Well, just wake up for a minute, then that's all, then you're back under again.

Q. And you're back under again? A. Yes.

Q. Now, do you remember being operated on?

A. I do the second time.

Q. You do the second time?

A. But not the first.

Q. But not the first? A. No.

Q. Did they bore holes in your head?

A. Yes, they drilled holes up in there, right there (indicating) there is a hole on each side.

Q. One on each side, will you point to those again?

A. Right up there (indicating) you can see them if you step up here, you can see them. There is dents in there, yet, right there (indicating).

Q. But you don't have any recollection of the first operation?

A. Oh, no, that's entirely blank to me. [112]

Q. How did you feel while you were in the hospital?



(Testimony of Guy W. Swanson.)

A. Well, you never had no feeling, you know, you didn't even know. Come to for a minute and then you're out, just like that (indicating).

Q. Now, after you left the hospital that first time, where did you go then?

A. Well, there was a fellow come up and I was going out, I don't even remember him coming up there, I was going out to his house. His name was Guy Jenks, and so my girl friend come up there, I think it was a Sunday morning when I was released, and here she'd been up there at 8:15, I think, I don't know, I can't recall back and tell you for sure, and here she was up there at 8:15 the next morning. She had my suit and my shirt and my shoes, and in the meantime the nurse had brought out my longshore clothes, they were cleaned, they had laundered them, you know, and I had them on and I was sitting up there waiting for her, but so much of it is a blank I don't remember, and then she says, "Come on," and so we went out and we thought this Guy Jenks was going to meet me out in front, so we waited there I guess a few minutes and she said, "Well, come on, we will go in my sister's car," and her brother-in-law, and I got over and got in their car, so they took me out to where Guy Jenks lived, he had my car parked in front of his place, took it from the Terminal 4 out there for safekeeping, so I went [113] in there—had a hard time getting up the stairs, you know, it's up an incline, went in there and this woman she was kind of nervous so my girl friend, she said, "Frank, take

(Testimony of Guy W. Swanson.)

him home over to your place," that's her brother-in-law, so I went over there and they kept me there four days and then it come to me all of a sudden just like that (indicating) that I had an apartment rented and then I decided I was going back to the apartment, and I told them to call Gilbert Dunn down at the Earle Hotel which they did and he came out and got me. She didn't want me to leave there, you know, so I told them to come from town out Hawthorne Street and I knew where the apartment was coming from town, but he drove the other way and stopped a block from the place and I happened to look and I seen the apartment down there, and I said, "That's where I live."

Q. Well, now, where did you go—before this accident had you rented that apartment?

A. I rented that the 5th of the month.

Q. And you rented it then four days before the accident?      A. Yes.

Q. And you hadn't moved into it?

A. Well, I had moved my things over there.

Q. You had moved some things over there, but you hadn't started to live in that apartment?

A. No, not yet. [114]

Q. And then did you stay in this apartment then until you went back to the hospital?

A. Yes. I waited and went in for the second operation.

Q. Yes.      A. Yes, I stayed there.

Q. Well, when you were staying there in that

(Testimony of Guy W. Swanson.)

apartment, how did you feel then between that time that you left the hospital until you went back?

A. Well, my eyes, they wouldn't close, you know.

Q. Your what?

A. My eyes wouldn't shut, couldn't shut them, blink them, you know, and I had to have something done I knew, and that's when I decided to go back to the hospital.

Q. Were you in any pain because of that?

A. Oh, yes, you have pain in your back all the time.

Q. I didn't hear that?

A. Pain in my back and my legs aren't the same all the time.

Q. Now, I am talking about the time between these two operations; what pain did you have?

A. I had a pain in my back, yes.

Q. And did that interfere with your walking around?      A. Oh, yes, sir.

Q. In the apartment?

A. Oh, yes, very much. [115]

Q. Now then, when did you go back to the hospital again, do you remember that?

A. I don't remember, I think it was just about the first of the year. Now, it might have been a few days before the first of the year, that would be '56.

Q. '55, would it not?

A. Yes, '55; the latter part of '55, the first of—

Q. In December of '55?

A. I think it was, yes.

(Testimony of Guy W. Swanson.)

Q. Then how did you feel when you went back to the hospital; were you suffering any?

A. Well, yes, I was suffering.

Q. How were you suffering?

A. Well, my back and my head was tight, very tight.

Q. And you speak of your eyes; what was wrong with your eyes?

A. They feeled like they just stared, everybody said they wouldn't close.

Q. They wouldn't close?           A. No.

Q. How long were you in the hospital then the second time?

A. Well, I do remember I got out the 18th of January, that is '56, the 18th of January, day after my birthday I got out.

Q. Now, what did the doctor do for you the second time [116] you went in the hospital?

A. Well, they drilled in that head again right there (indicating) them holes where they did the first time.

Q. Did they drill through the same holes into your head?           A. Yes.

Q. The second time you went back?

A. Yes.

Q. But you say you remember that operation?

A. Well, yes, you can hear everything, you know, everything they were doing but it didn't hurt you, you know, they give you a spinal and then they—you can hear them cutting up there, hear everything, you know, but it don't hurt when they are

(Testimony of Guy W. Swanson.)

doing that. You'd think they was cutting on you it would hurt, but when they give you a spinal it don't hurt.

Q. But he did go through the same holes that he used before? A. Oh, yes, yes.

Q. And how did you feel after that operation?

A. Well, I got so I could—my eyes would blink, you know, they wouldn't stand wide open all the time.

Q. You got so your eyes would blink?

A. Yes, they'd blink.

Q. And how did you feel mentally; did you feel—while you were up there were you drowsy like you were the first time, or—— [117]

A. Well, you didn't feel, you didn't feel like you should, you know, not near. You couldn't feel good, you know, coming out from that operation.

Q. Do you remember the second time up there a Dr. Selling was called in for consultation?

A. Who?

Q. Dr. Selling? A. No, I don't.

Q. Do you remember you asking him if he didn't take care of a friend of yours a few years ago?

A. I don't remember that, no.

Q. You don't remember that doctor at all?

A. No, I sure don't, I sure don't.

Q. And you don't remember having any conversation with Dr. Selling up there?

A. I sure don't.

Q. Dr. Kloos was the doctor that operated on you?

(Testimony of Guy W. Swanson.)

A. Kloos, yes, he was the one that operated on me.

Q. Were you pretty sick when you were in the hospital that second time?

A. Oh, I don't know if it was sick or what, you know, just didn't feel like yourself, you know.

Q. You don't feel like yourself?

A. No, didn't have any strength to get up or go around like you should. [118]

Q. This hospital record shows you didn't get along with the barber very well up there; what happened up there on that?

A. Well, I guess he scared me.

Q. He scared you?           A. Yes.

Q. How did he do that?

A. Well, when he—I never will forget that—when he come in to get me ready for the second operation——

Q. Speak a little louder.

A. When he was getting me ready for the second operation, he come in and I was asleep and he woke me up and held the razor out like that (indicating) and oh, boy, that scared me when I seen that razor up there, boy that scared me.

Q. Then were you still scared of him all the time you stayed in the hospital then?

A. Well, I wouldn't trust him too far, you know.

Q. You wouldn't trust him too far?

A. No.

Q. Now, after you came—the barber, you know,



(Testimony of Guy W. Swanson.)

at St. Vincent's Hospital, he is just a little fellow, isn't he?      A. Yes, just a little fellow.

Q. A little fellow that weighs about a hundred pounds?

A. Yes, but with that knife, they could do a lot of [119] things with it.

Q. Now, after you left the hospital, how did you feel?

A. Well, I didn't feel too good, that's a cinch.

Q. And how have you felt since then?

A. My back and my legs are haywire.

Q. Your what?      A. My back and my legs.

Q. Your back and your legs are, you say are haywire?

A. Yes, they give me a lot of trouble. Sometimes I think they are going out entirely. I can't walk right. If I had to get out in double time. I couldn't do it. If a car was going to hit me, I couldn't jump out of the way.

Q. How—does your back ache, too?

A. Yes, it's a steady ache back there.

Q. Now, at first when you first went to the hospital did you have severe headaches?

A. Yes, I used to have headaches.

Q. Those have cleared up, haven't they?

A. Oh, yes, yes, entirely.

Q. They have all gone?      A. Oh, yes.

Q. You don't have headaches any more?

A. The only time that I have a headache is if I don't eat, see, like if I don't eat at night, then I get

(Testimony of Guy W. Swanson.)

worries, but otherwise if I eat and don't worry I am all right. [120]

Q. But the bad headaches that you had when you were first at the hospital, they cleared up?

A. They are gone.

Q. Have you been able to do anything since the accident? A. Not a thing in the world.

Q. Do you walk around very much?

A. I can't walk very much. I used to walk quite a bit, but I can't do it any more, it gets less and less all the time.

Q. And where do you spend your time?

A. I stay in the room most of the time.

Q. Stay in your room most of the time?

A. Yes.

Q. Is that in that same apartment?

A. Same apartment, yes.

Q. Where is that located?

A. 2238 Southeast Madison.

Q. Now, how about your legs; how do your legs affect you?

A. They feel like they're going to give out. They just feel numb. Sometimes they feel just as numb as—worse than when you are sleeping, you know, and you wake up. it's worse than that, it's different from that, it's just numb.

Q. Does that bother you when you step up?

A. Yes, it bothers me all the time. [121]

Q. Now, how about—you rode down here with Mr. Beebe in a taxicab this morning from our

(Testimony of Guy W. Swanson.)

office, does it bother you—how do your legs affect you when you got to step in an automobile?

A. Well, I can't step down, I got to let the cab or car pull away from the curb, then put my feet even with the tires and step up, but I can't step down. My back won't let me step down, but I can step where I got to raise myself up.

Q. Oh, you can raise your feet up, you can do that?

A. Yes.

Q. Now, how about your memory since this accident?

A. Well, sometimes it's good and then again it's just blank. Can't remember the way I should. I have to make notes of a lot of things or else——

Q. You say what?

A. I have to make lots of notes of things.

Q. Notes. Do you make notes and carry those notes around with you?

A. Yes, sure; I make notes, I have even got them in my pocket here.

Q. When you have an appointment or anything like that?

A. I put it down, yes, sure.

Q. And do you sometimes forget after you have had a conference with me? [122]

A. Well, yes, I don't know what makes that. I hate to admit it, but——

Q. What wages were you receiving—we have this account here from the Pacific Maritime, if the Court please, showing it's a little better than \$5,000 a year, and we wish to amend the pretrial order to

(Testimony of Guy W. Swanson.)

set down \$15,000 loss of wages instead of \$10,000. It's left blank, your Honor.

The Court: All right.

Mr. Morrison: We wish to put that \$15,000 loss of wages.

The Court: You may do that.

Q. (By Mr. Morrison): Your lost wages are about \$5,000 a year?

A. Yes, I made over that every year.

Q. Do you feel that you are improving any?

A. Well, if I am, it's awfully slow.

Q. What was that?

A. If I—I don't think I am, I really don't think I am. I hate to admit it, but——

The Court: Is he under a doctor's care now?

Mr. Morrison: I didn't hear that. Oh, he goes to doctors, yes.

The Court: Ask him.

Q. (By Mr. Morrison): Yes, I want to go into that. Now, what treatments have the doctors given you? [123]

A. They give me these therapy treatments for my back.

Q. Where do you take those?

A. I get them out at Providence Hospital.

Q. And is that the only treatment that you are under at the present time? A. Yes, yes.

Q. You have seen many doctors, haven't you?

A. Yes, I have seen many of them.

The Court: When was the accident?

(Testimony of Guy W. Swanson.)

Mr. Morrison: The 9th of February, '55, it's approximately two years ago now.

The Court: Has he been under a doctor's care all the time?

Mr. Morrison: If the Court please, I haven't been on this case very long.

The Court: Well, ask him.

Q. (By Mr. Morrison): Have you been going to doctors or under their advice all this time?

A. Well, going to them and they don't do anything for you, I go to doctors right along.

Q. But they don't—other than just physiotherapy, they don't do anything for you?

A. Oh, no, no, no.

Q. You went——

The Court: Who are going to be your medical witnesses? [124]

Mr. Morrison: Dr. Kloos is the doctor that operated on the gentleman. I am calling him in the morning, and he was sent also to Dr. Berg. Now, I might say that there was a sort of a misunderstanding there at first when he was taken in the hospital. Dr. Cherry saw him and he thought—he turned him over to Dr. Kloos because on account of the injury calling for a brain man.

The Court: Is Kloos a neurosurgeon? Is he practicing in an office; does he practice in a downtown office?

Mr. Morrison: Yes, your Honor, he is in the—on Johnson Street.

The Court: Who is he with?

(Testimony of Guy W. Swanson.)

Mr. Morrison: He is with himself, he is a neuro man and he was turned over to him and through a mistake we found, in talking—misunderstanding with counsel we understood they were going to call Dr. Davis who is a partner of Cherry's, so then we knew there was a misunderstanding some place, but he was sent to Dr. Richard Berg, who saw him several times.

The Court: Is Davis in Cherry's office?

Mr. Roberts: I think Mr. Morrison has got it mixed up, your Honor. I believe he was referred originally to Dr. Cherry because they thought it was an orthopedic question, then Dr. Kloos was brought into it right away. Dr. Cherry is with Blair, Thatcher, and Davis. [125]

The Court: Davis is not in that office?

Mr. Roberts: The Davis we have is with Livingston, so he has nothing to do with it. I knew that Dr. Cherry was going to be called, that's the reason I got Dr. Marxer for our doctor.

Mr. Morrison: Joe Davis is who we thought that they had called in, Joe Davis and we knew of the fact that he and Cherry were in the same office, and we knew it was a misunderstanding, and it was our mistake then, he went to Dr. Richard Berg.

The Court: Who are you going to call?

Mr. Roberts: Well, your Honor, I probably will be calling Dr. Marxer. He has treated him, and also the neurologist who examined him twice, and de-



(Testimony of Guy W. Swanson.)

pending on what Mr. Morrison does, I may even call his attending physician.

The Court: Who?

Mr. Roberts: Dr. Cherry, who for over a year took care of him, as I understand it.

The Court: Do you expect to call any medical testimony, Mr. Wood?

Mr. Wood: No.

The Court: Go ahead.

Mr. Morrison: We certainly would have had Dr. Cherry if it hadn't been for that misunderstanding. We thought that his partner had been called in on the other side, and [126] we figured it was undoubtedly a mistake, and that's why he was sent to Dr. Berg. You may cross-examine.

### Cross-Examination

By Mr. Roberts:

Q. Mr. Swanson, do you remember me?

A. No, I don't.

Q. You don't remember me taking your deposition in Mr. Murray's office?

A. No, I sure don't.

Q. And Mr. Stark was up there, you don't remember that?

A. I don't remember you, that's a cinch.

Q. Do you remember in that office though when somebody took your deposition?

A. It seems like I remember that fellow there (indicating).

Q. Mr. Wood, yes, he was there, too.

(Testimony of Guy W. Swanson.)

The Court: Well, he wears his hair the same, and you had yours changed.

The Witness: I think he said right next to me.

Q. (By Mr. Roberts): Well, this was on June 4, 1955. Do you remember that examination?

A. I remember something, I don't know.

Q. Well, they were all in Mr. Murray's office, and Mr. Wood and I both asked you some questions. That was in between your two operations.

The Court: Is his hearing good? [127]

Mr. Roberts: I think his hearing is all right.

The Court: If it isn't, you can sit in the jury box, if you want to.

Mr. Roberts: Thank you, your Honor.

Q. Mr. Swanson, you were born in Mt. Vernon, Washington? A. Yes.

Q. And you went through the eighth grade.

A. Yes.

Q. And have you ever been in Texas?

A. Oh, yes.

Q. When were you in Texas?

A. Oh, it's been years ago.

Q. How many years would you say?

A. Well, just offhand, I can't remember.

Q. Could it have been 10 or 15 years?

A. It's over ten years since I have been in Texas.

Q. What did you do?

A. I worked for a biscuit company there.

Q. And then did you come back to the Northwest after that? A. Yes.

(Testimony of Guy W. Swanson.)

Q. When did you first come back here, Mr. Swanson?

A. Well, I came here in Portland, I think, right about the war time.

Q. About the war time, did you work in the shipyard [128] during the war time?

A. No, I never worked in the shipyard.

Q. When did you work in the woods, before the war?

A. Yes, right—no, I think it was right—the first—the start of the war—I didn't stay very long.

Q. In the woods?

A. No, I didn't stay very long.

Q. Had you worked for Weyerhaeuser or somebody like that?

A. No, it's way up in Washington there, I've forgot the outfit.

Q. Do you remember when you first went on the water front?      A. Yes, I do.

Q. When was that?

A. Well, I don't know the year, that's what I have been trying to figure out.

Q. Would it be 10 years ago or 15 years ago?

A. I been around 12 years on the water front.

Q. What were you doing immediately prior to that?      A. Well, I had come out of the woods.

Q. Have you ever been married?

A. Oh, yes, sir.

Q. When were you married?

(Testimony of Guy W. Swanson.)

A. Oh, that's years ago, I was just a young fellow.

Q. How old were you?

A. That I couldn't say, it happened so far [129] back.

Q. I realize that, Mr. Swanson, were you 20?

A. Oh, I was over that.

Q. Between 20 and 30?

A. Yes, somewhere around there.

Q. And how long were you married, very long?

A. No, not very long.

Q. Have any children? A. No.

Q. Where were you divorced?

A. Well, I just got a divorce.

Q. Whereabouts? A. In Amarillo.

Q. In Amarillo, Texas? A. Yes.

Q. I notice on the hospital record there, you kind of indicated to Dr. Kloos that you thought your wife was trapping you or something?

A. Well, I don't even know nothing about that.

Q. You don't remember telling that to the doctor? A. No, I sure don't.

Q. Now, you had the accident on the 9th of February, 1955; is that right?

A. Yes, that's right.

Q. And you don't know anything about the accident? A. Yes. No, I don't. [130]

Q. Do you remember leaving the union hall at about a quarter to 8:00 and going down to the ship

(Testimony of Guy W. Swanson.)

and getting on the ship and that's all; is that correct?

A. That's right.

Q. Do you know what happened to the hatch covers?

A. I know we started to cover up.

Q. You don't know who you started to cover up with?

A. Clarence Uskoski, right back there (indicating).

Q. You heard him testify this morning, didn't you?

A. Yes.

Q. And you heard him testify that you were down there when they uncovered, too?

A. Well, I don't know that.

Q. You don't remember that?

A. No, I got the job at a quarter to 8:00 and then by the time I got on there it was after 8:00.

Q. You don't remember uncovering?

A. No, I don't

Q. Do you remember replacing any of the hatch covers back?

A. I remember when we started to cover, yes.

Q. How many covers had you put back?

A. We hadn't put very many back, I know that.

Q. Then the accident happened?

A. Yes, that's right.

Q. But you don't know how it happened? [131]

A. I don't know how it happened.

Q. I think at the time I took your deposition, you told me that it occurred right—it occurred right in the middle of the hatch, didn't you?

(Testimony of Guy W. Swanson.)

A. I don't know, it's a blank to me.

Q. Do you remember your first hospitalization, when you first went to the hospital? A. No.

Q. Where did you go, to St. Vincent's?

A. Well, they took me in the ambulance, I don't know where they took me. I woke up in the hospital.

Q. And it was St. Vincent's you were later told, weren't you? A. Yes.

Q. And Dr. Kloos was taking care of you; is that correct? A. Yes, he was the doctor.

Q. How about Dr. Cherry; did he look at you?

A. I never saw him.

Q. You never saw him in the hospital?

A. No.

Q. Did you see any other doctors up there?

A. No, no.

Q. Dr. Kloos the whole time?

A. That's the only doctor I ever saw.

Q. Were you in a ward or a private room? [132]

A. Well, there was a bunch of men in there I understand.

Q. I see. A. I don't know how many.

Q. Do you remember what the first conscious thing was that you remember after the accident?

A. Just waking up for a minute, Dr. Kloos came in there one time and I was just waked up for a second, then you're out, you're blank from then on.

Q. I see. You were operated on that first time in the hospital; is that correct?



(Testimony of Guy W. Swanson.)

A. Well, I imagine.

Q. Two holes here in your head? A. Yes.

Q. When were you released from the hospital, the 20th of March?

A. I think it was the 20th of March, as near as I can find out.

Q. You don't remember what happened while you were in there? A. No.

Q. Do you remember any treatment that you had? A. No, I don't remember a thing.

Q. Or any of the doctors that looked at you?

A. No, no.

Q. Then you were released from the hospital?

A. I was released, yes. [133]

Q. Do you remember filing the complaint that you filed in this case, Mr. Swanson?

A. What do you mean "filed"?

Q. I mean the piece of paper that you have to file when you first sue somebody; do you remember signing that? A. I never signed nothing.

Q. You didn't sign anything like that?

A. I never signed nothing.

Q. Then you went back to the—went back to the hospital in December of 1955; is that correct?

A. Yes.

Q. And yet you don't remember me taking this deposition in June of '55?

A. I don't remember you, no, I don't.

Q. But do you remember a deposition being taken?

(Testimony of Guy W. Swanson.)

A. Yes, I remember this fellow right here (indicating), up there he sat right by me.

Q. That's Mr. Wood?

A. I think—I thought he was part of the stevedoring company.

Q. When you got out of the hospital, did any doctor treat you?

A. Well, I went up to Cherry, and then——

Q. That's the first time you went up to Dr. Cherry?

A. I don't—it's—I can't tell you if it was the [134] first time or what, but anyway the heat treatments on my back was out at Providence Hospital.

Q. Was that before you went back to St. Vincent's for another operation?

A. Well, I don't know right offhand, I don't know, you have got it down, you could tell, I can't.

Q. Well, I think—I am referring to page 31 of your deposition and on there I asked you, "What kind of treatments have you been taking, Mr. Swanson?" And you answered, "They gave me heat treatments, and they massaged them, and they have you lift your arms up and your legs up. They have you do some of it, see." And I asked you, "Are you wearing a back belt?" And you answered, "I am wearing a belt, a corset; I've got it on right now." Now that deposition was taken in the office of Mr. Murray on the 4th of June of '55. Does that refresh your recollection? A. Yes, I was there.

(Testimony of Guy W. Swanson.)

Q. "I see. But Dr. Cherry is taking care of you as far as your back injuries are concerned; is he not? Answer: Yes, he is supposed to be a back specialist. Question: He is an orthopedic (sic)? Answer: Yes." Now, you remember that, do you not?

A. Well, I don't remember every word.

Q. Well, not every word, but during that period he was taking care of you for your back and your other injuries? [135]

A. Then, I went out and the girl would massage my back and put heat on it.

Q. I see. Out at Providence?

A. Yes, Providence.

Q. Now, after you first got out of the hospital and around June of 1955 when you were getting this heat treatment and massage, how was your head feeling? A. June of—

Q. '55. How was your head. How did you feel then as far as your head was concerned?

A. Well, it was tight.

Q. Tight?

A. That's before I got the second operation.

Q. That's tight, Mr. Swanson?

A. Well, yes, it was tight.

Q. Having any headaches at that time?

A. Well, yes, I got headaches and my eyes, you know, they wouldn't close like, you know, blink like they're supposed to.

Q. Well, weren't you able to sleep that night?

(Testimony of Guy W. Swanson.)

A. Well, you see, for a certain length of time, yes.

Q. I see. Now, again, referring to your deposition, Mr. Swanson, on page 33, I asked you, "How often are you seeing the doctor for your treatments now? Answer: Twice last week, and I'll get it three times this week. I'll get it [136] Monday, Wednesday, and Friday. Question: That is these heat treatments— Answer: Yes. Question: —and exercises?" And I asked you, "Have you been getting any injections? Answer: No. Question: By the way, how does your head feel now? Answer: Well, I can't kick on that— Question: I see. Answer: —because he done a good job." At that time, you told me you weren't having any trouble with your head?

A. When was that?

Q. In June of 1955?

A. Well, I don't know why I went back to the hospital then, because it was tight.

Q. Well, maybe we can get to that a little further. I am just asking you if you remember telling me anything of that nature?

A. No, I don't.

Q. "You don't have any headaches— Answer: No. Question: —or anything like that? Answer: My head is very good." And on page 34, in the middle of the page, "Right on top of the head. Is that it? As far as you are concerned, now, your head is all right. Is that true? Answer: Yes. Question: You don't have any headaches or anything? Answer. No;

(Testimony of Guy W. Swanson.)

it don't bother me. My back and my legs is what is killing me." In June of 1955, you said your head wasn't hurting you, you had no headaches or anything [137] but your back and your legs were killing you at that time. Do you remember anything of that?

A. I don't remember nothing hardly, just it comes and goes, you know.

Q. During that period Dr. Cherry was taking care of you for your back; is that right?

A. Yes, I was going to him then, go out to the Providence Hospital and the girl would put heat on the back.

Q. Were you satisfied with the treatment that Dr. Cherry was giving you? Do you think he was helping you?

A. I got the treatment out at the hospital.

Q. Oh, I see, but he was prescribing it, wasn't he?

A. Yes, I'd like to have more of them.

Q. I see.

A. I'd like to have more of them, I'd like to have them right now.

Q. Also on this head business, Mr. Swanson on page 35 of your deposition I asked you, "You can use your hands, though? Answer: I can use them, but I haven't got one-tenth the strength in them. Question: I see. You are able to talk normally, I notice. Answer: Yes, yes. Question: I notice you are wearing glasses. Have you always worn those? Answer: Well, yes. Question: Do you have any trouble with your sensory organs like smelling— Answer: No. Question: —and taste? Answer: No, I

(Testimony of Guy W. Swanson.)

can [138] taste. Question: Your hearing?" Now, do you remember telling me all that in June of 1955?

A. No, I don't remember. I don't remember you, in fact.

Q. Would you say that that was wrong, that in 1955 you can't hear too well and you are——

Mr. Morrison: Now, just a minute, he hasn't testified—this witness has not testified there was anything wrong with his hearing.

The Witness: I can hear, I have heard good.

Q. (By Mr. Roberts): How about your smell?

A. I can smell, yes.

Q. Now, did anyone else see you in 1955 besides Dr. Kloos and Dr. Cherry?

A. Gosh, I don't know if anybody did or not.

Q. Did Dr. Kloos give you any further treatment once you got out of the hospital?

A. I got to go back up there a few times.

Q. What did he do for you, Mr. Swanson?

A. Just come in and went in the room and he looked at you.

Q. Talked to you? A. That's right.

Q. And then released you again; is that it?

A. Yes.

Q. And you went back in the hospital the latter part of [139] December of 1955; is that right?

A. I think that's right.

Q. How did you get back in that time; did you call Dr. Kloos, or who did you call?

A. I called the doctor, yes.

Q. What did you tell him, Mr. Swanson?



(Testimony of Guy W. Swanson.)

A. Well, I don't know to this day, I don't know what I told him.

Q. You don't know what you told him?

A. Then I got a friend of mine to take me up to the hospital.

Q. Did Dr. Kloos put you in the hospital then?

A. Well, the nurse put me in.

Q. I see. Do you know why you wanted to go back in the hospital?

A. Yes, I knew why I wanted to go back in.

Q. What was your reason at that time?

A. Well, my head was tight and as I said, my eyes couldn't go shut like this (indicating).

Q. Was that to the leader?

A. Yes, it was right up there (indicating).

Q. What do you mean by tight?

A. Well, just worse—people never had it, they don't know.

Q. Well, I can understand that, Mr. Swanson, but I want [140] you to testify. When you say it was tight, was there a pain in there?

A. Well, just tight—tight as a drum. It wouldn't even let your eyes——

Q. Blink?           A. No, they wouldn't.

Q. You couldn't blink your eyes?

A. No, you couldn't.

Q. But were you having headaches?

A. Well, I don't remember.

Q. I see. Were you able to get around; were you living by yourself?

A. Just barely got around, I can get around

(Testimony of Guy W. Swanson.)

now, but I can't get around one-tenth as good as I used to.

Q. Who is taking care of you?

A. Well, my girl friend comes over and cooks meals part of the time; she takes care of her mother, too.

Q. Does she still do that, Mr. Swanson?

A. Yes, she still comes over.

Q. I mean very often? A. Yes.

Q. Who does all of your shopping for you?

A. Well, sometimes I go to the store, I do that.

Q. You live on the first or second floor of your apartment house? [141] A. I live on the second.

Q. And how do you get up there?

A. Well, I have to grab ahold of the stair rail and pull myself up.

Q. You can walk up the stairs all right?

A. By getting ahold of the rail, yes, and then brace the arm going up the other side.

Q. How long were you in the hospital the second time?

A. Oh, I got out on the 18th of January, the day after my birthday, I remember.

Q. January the what? A. 18th.

Q. 18th, 1956? A. I think it was '56.

Q. You were in that second time about two or three weeks? A. About.

Q. About three weeks?

A. About three weeks.

Q. Did you have another operation?

A. Yes, they operated on me.

Q. Who was that; Dr. Kloos?

(Testimony of Guy W. Swanson.)

A. Kloos done that.

Q. What treatment did Dr. Kloos give you?

A. Well, he drilled in my head there and I don't know what he done. [142]

Q. I mean, did he give you any injections or anything? A. No, no.

Q. He just made an exploratory operation and looked in your head?

A. Well, I don't know what they done, they drilled holes in there and went through it again.

Q. I see. Did you have any treatment to your back and your legs in the hospital the second time?

A. No, I wanted them to look at it and at my back, but this nurse, when I went in there, she said, "I haven't got orders to do that."

Q. I see. Did you tell Dr. Cherry you wanted some treatment on your back or Dr. Kloos?

A. Well, he referred me back to this Cherry in the Standard Building, he said he was a back specialist.

Q. Who; Dr. Cherry?

A. Yes, he said he was a back specialist.

Q. Did Dr. Cherry treat you again?

A. Never done nothing to me.

Q. Just kept you out for heat treatment?

A. Yes, that's all.

Q. Did you ever have any operation on your back? A. No, sir, no.

Q. On your legs or neck like that?

A. No. [143]

Q. Did you ever see any other doctors, Mr. Swanson? A. Yes—no.

(Testimony of Guy W. Swanson.)

Q. You saw two doctors for me, didn't you; Dr. Marxer and Dr. Davis; didn't you?

A. Yes, but they never done nothing.

Q. They didn't give you any treatment; they just looked at you? A. Yes.

Q. Did you have—did you see Dr. Raaf; do you remember Dr. Raaf?

A. No, I don't remember.

Q. Dr. Lucas or Dr. Chuinard? A. Yes.

Q. Did they treat you? A. No, no.

Q. They just looked at you?

A. Yes, just looked at me.

Q. Do you remember Dr. Berg whom Mr. Morrison just— A. Yes, I remember him.

Q. What did he do for you?

A. Well, I don't know what he did do for me.

Q. Did he give you any treatment?

A. Well, none as I know of.

Q. Did he look you over?

A. Well, he looked me over, yes. [144]

Q. Take X-rays?

A. I don't know if he took X-rays or not.

Q. You have been to quite a lot of doctors?

A. I have been to more than you can count on your hands and feet.

Q. Do you remember ever seeing a Dr. Dickel?

A. No, I don't remember him.

Q. Or Dr. Selling?

A. No, I sure don't know him.

The Court: I think we will put Mr. Pozzi on now

and maybe this examination can be finished tomorrow morning.

This is the other witness you were referring to?

Mr. Morrison: Yes.

(Whereupon, the witness, Guy W. Swanson, was temporarily excused.) [145]

### FRANK POZZI

produced as a witness on behalf of the plaintiff and having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Morrison:

Q. Your name is Frank Pozzi? A. Yes, sir.

Q. And you are a lawyer, are you not?

A. Yes, sir.

Q. Mr. Pozzi, how long have you known Mr. Swanson? A. Approximately in 1942 or 1943.

Q. And how well did you know him?

A. Quite well, I knew him as a fellow worker on the water front and I have known him as a lawyer.

Q. Did you work down there at that time?

A. I did.

Q. Did you work with him? A. Yes.

Q. And you have known him in your professional capacity as a lawyer? A. I have.

Q. And how was his general health before this accident? A. Very good, excellent.

Q. Was he a good worker?

(Testimony of Frank Pozzi.)

A. He is a fine worker, he is big and husky and strong.

Q. How was he mentally? [146]

A. Mentally alert, very congenial man to work with. Always willing to help the other man if you were having trouble or hard go, he would always step in and help.

Q. Now, since this accident about how many times have you seen him?

A. About—I believe three times. I have seen, I have talked to him, and additionally three or four times on the telephone.

Q. And then you talked to him on the telephone about three or four times and you have seen him about three times?      A. Yes.

Q. Now, did you notice any change in his condition, say, since you first met him?      A. Yes.

Q. What change?

A. Well, he is, in my opinion, incompetent as compared to what he was before the accident.

Q. How does he manifest that?

A. A number of ways. The first time I saw him after the accident, he was—well, he didn't even know me, and I have known him well, I have worked with him many times in the hold of ships, have played pinochle with him on the water front lunch hours, and so on, but since then I think the last time I saw him was about four months ago, approximately, and he had—feels that he is being persecuted. [147] Now, that's not like his normal character at all. Part of that time he called me by



(Testimony of Frank Pozzi.)

phone and suddenly started crying on the telephone. I had never seen him or heard him do that prior to the accident. Through his conversations, well, I can't tell what he told me, but in effect that people were trying to cheat him and that his lawyer was dishonest, meaning you, Mr. Morrison.

Q. Meaning me?

A. Meaning you and that he couldn't trust you any more. Those are some of the things.

Q. And the first lawyer, of course, there was——

A. The same thing occurred, of course, with his prior attorney. Also the same thing occurred with, I think, two different union officials of his union.

Q. That he figured that they were cheating him?

A. They were being dishonest.

Q. And that they were what?

A. That they were trying to cheat him and that he couldn't trust them.

Mr. Morrison: You may cross-examine.

### Cross-Examination

By Mr. Roberts:

Q. Frank, you told us you knew Mr. Swanson, did you not, before this case, right after it was filed?

A. Yes, I have known him since, I think, 1942 or '43 when [148] he came on the water front. I think I was already there.

Q. You have done legal work for him; is that correct?

A. Yes, once, I believe he had a suit, a little

(Testimony of Frank Pozzi.)

problem with a suit one time, he came in to see me about it.

Q. Did he actually see you in a professional way as far as this case is concerned?

A. He attempted to, but I wouldn't talk to him about it in a professional way.

Q. Because another lawyer was involved?

A. Yes.

Mr. Roberts: That's all.

Mr. Wood: That's all.

Mr. Morrison: Is it not true that I have asked you to talk to him?

The Witness: Yes, it's been necessary fairly recently within the last few months because of his condition.

Mr. Morrison: You have been a sort of go-between between him and me?

The Witness: That's right, to try to keep him halfway under control.

Mr. Morrison: That's all.

The Court: How many witnesses will you have on liability, Mr. Roberts?

Mr. Roberts: No more than three, your Honor.

The Court: Will you have them available tomorrow? [149]

The Court: Will you have them available tomorrow and I will call my medical witnesses as soon as Mr. Morrison has called his.

The Court: Well, you don't expect to get through with all your medical testimony tomorrow, do you?

Mr. Morrison: Well, Dr. Cherry and Dr. Berg,

I think, will be gone for a week, but I can bring in the brain specialist, I will have him here tomorrow morning.

Mr. Roberts: If it's all right with your Honor, then, I will call my medical when he has got all of his medical in.

The Court: What?

Mr. Roberts: May I call my medical experts when he has all his medical testimony completed?

The Court: Yes, I told you yesterday about that. Will you have any witnesses on liability?

Mr. Wood: I don't expect to, unless something happens.

The Court: Well, we better be here at 9:30; it looks like we will have a great deal to do tomorrow. His cross-examination will have to be finished first.

(Whereupon at 3:35 p.m., February 5, 1957, an adjournment was taken until 9:30 a.m. of the following day.) [150]

Wednesday, February 6, 1957, 9:30 A.M.

Mr. Morrison: Call Dr. Kloos.

The Court: You want to do it this way rather than complete your cross-examination?

Mr. Roberts: Yes, your Honor. I will finish my cross-examination of Mr. Swanson later on, if it will be all right.

The Court: What are your views about that?

Mr. Morrison: It doesn't make any difference.

Mr. Wood: It is all right with me.

## EDWARD K. KLOOS

was produced as a witness in behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Morrison:

Q. State your name, please.

A. Edward K. Kloos.

Q. Are you a regulary licensed physician and surgeon?      A. I am.

Q. How long have you been licensed to practice in Oregon, [151] Doctor?

A. Since the fall of 1947.

Q. And of what schools are you a graduate?

A. I graduated from the Western Reserve University in Cleveland, an undergraduate school; the University of Rochester School of Medicine and Dentistry in Rochester, New York, and I have a graduate degree from the University of Minnesota.

Q. Have you taken any post-graduate work?

A. Yes.

Q. What is that?

A. You mean internship and so on?

Q. Yes.

A. I interned at Strong Memorial Hospital in Rochester, New York, for a year, had a residency at Ogden Memorial Hospital in Elmira, New York, for a year, and had a three-year fellowship in neurological surgery at Mayo Clinic.

Q. Three years in Mayo Clinic in what?

(Testimony of Edward K. Kloos.)

A. Neurological surgery.

Q. In neurological surgery? A. Yes.

Q. When did you finish the Mayo Clinic?

A. I finished my fellowship there in '43, and then I stayed on on the staff in neurological surgery for about a year before I went in the service. [152]

Q. Then you were in the service? A. Yes.

Q. After you got out of the service where did you go?

A. I was in partnership in Denver for about six months before I came to Portland.

Q. You are a specialist, are you not?

A. Yes.

Q. In what? A. Neurological surgery.

Q. Are you on the staff of any local hospitals?

A. Yes.

Q. Which ones?

A. St. Vincent's, Emanuel, Providence, Holladay Park, Physicans and Surgeons, the County and University Hospital.

Q. Were you called in to treat Mr. Swanson?

A. I was.

Q. Following his accident. Who called you in?

A. Dr. Howard Cherry.

Q. Dr. Howard Cherry? A. Yes.

Q. What condition was he in when you first saw him?

A. May I refer to my notes here?

Q. Surely. A. He was comatose.

The Court: Who is this doctor practicing with?

(Testimony of Edward K. Kloos.)

Q. (By Mr. Morrison): Are you associated with anyone?      A. I practice alone.

Q. And you restrict your work exclusively to neurosurgery, do you?      A. Yes.

The Court: He is a member, of course, of the Medical Society?

Mr. Morrison: Yes.

Q. What medical societies do you belong to, Doctor?

A. I belong to the Multnomah County and Oregon State Medical Societies, and the American Medical Association, American College of Surgeons, Harvey Cushing Society, and the Congress of Neurological Surgeons and the Western Neurosurgeons Society and the North Pacific Society of Neurology.

The Court: I don't see how you can remember them all.

The Witness: I pay dues every year.

Q. (By Mr. Morrison): How long did this man remain unconscious in the hospital?

A. According to my notes and to the best of my recollection he was unconscious or semi-comatose until the 17th of February.

Q. And the accident happened on the 9th?

A. On the 9th, of 1955.

Q. Now go ahead and state what you found about his condition and what you did.

A. Well, he was comatose. There had been a history which [154] he was unable to give but apparently was obtained from others when he arrived



(Testimony of Edward K. Kloos.)

at the hospital, that he had had a head injury a short time before and had been comatose ever since.

On examination I found that he would move all of his extremities; that is, his arms and legs, if stimuli, painful stimuli, were applied, and that the pupils of his eyes reacted to light. Reflexes in his arms and legs were present, active and equal. Beyond that there wasn't much more of an examination that could be made, because the other parts of the neurological examination require the co-operation of the patient, and he was comatose.

Q. What did you do?

A. There was at that time no indication of a surgical condition being present. I felt that he had sustained a severe head injury with concussion and contusions or bruising of the brain, and that so-called conservative treatment, namely, supportive treatment, was all that was indicated. He was observed carefully with regard to his blood pressure, pulse and respiratory rate and given fluids intravenously, and so on, in order to try to help to repair the damage.

Q. Continue on with your treatment.

A. On February 12th I felt that he had deteriorated somewhat in as far as his level of consciousness was concerned, and he had developed by that time a positive Babinski sign [155] on the left side

Q. What is that?

A. That is an abnormal neurological sign which is produced by stroking the bottom of the foot. Normally the big toe bends or flexes, goes down,

(Testimony of Edward K. Kloos.)

but in the abnormal case or positive sign the big toe comes up, the other toes fan out, and it is definitely an indication of damage somewhere above the area where the nerve to the foot comes off the spinal cord. It can be either in the spinal cord or in the brain.

Q. Indicating damage either in the spinal cord or brain?

A. Yes. In view of that and the fact that he had deteriorated with regard to his level of consciousness, I felt there was a possibility of his having developed an acute blood clot over the surface of the brain, and that we had better investigate that. That was done by surgery on the same day, on February 12th.

Q. What did that surgery consist of?

A. That surgery amounted to the making of burr holes on both sides of the head and opening the coverings of the brain to see if there were any collections of blood underneath. None was found.

Q. That last part, Doctor, will you repeat that to the Court?

A. Opening the coverings of the brain to see if there were [156] any collections of blood beneath the coverings of the brain, between the coverings and the brain itself. None was found, and the possibility of his having developed a hemorrhage in the brain substance itself was considered, and therefore on the right side the frontal lobe of the brain was explored with a brain needle. And again no

(Testimony of Edward K. Kloos.)

blood was found; no gross collection of blood was found.

The Court: How long did this surgery take?

A. I will have to refer——

The Court: You can pick it up later.

A. Well, approximately an hour and a half to two hours.

The Court: Did you have an assistant?

A. Yes.

The Court: Who was your assistant?

A. One of the interns.

The Court: One of the interns.

A. I did note that there was a great deal of swelling of the brain, of the surface of the brain itself. It appeared to be tight with a lot of swelling, and I felt that in view of the continued swelling, which was five days after the injury, there must have been serious adhesions or a bruising of the brain substance.

The Court: The word you just used was “tight”?

A. Tight, a swelling.

The Court: Tight against the covering? [157]

A. Yes. Following the surgery Mr. Swanson's condition did not change, and was not expected to change inasmuch as nothing was found that was creating the pressure in his head other than swelling of the brain substance, and it would take time for that to clear up.

He remained comatose through the 16th of February, or at least semi-comatose. But on the 17th he appeared to be considerably improved. He was

(Testimony of Edward K. Kloos.)

speaking some and appeared to be awakening.

Do you wish me to go on?

Mr. Morrison: Go right ahead.

A. He remained more or less stationary, improving very slowly, through March 7th. He was then complaining of some headache. On March 11th, 1955, he suddenly became belligerent and very irrational, and it was felt that there may still have been something inside the head that had not been discovered at the time of the surgery and that he might have to have more surgery.

However, on March 15th, when the second surgery was scheduled, the night before he was so belligerent and irrational that he refused to allow his head to be prepared for surgery, and it was felt best that, in view of his agitated state, to cancel the surgery at that time.

By the morning of the 15th, however, he was again very much better, and he was apologetic. He seemed to be so [158] much improved that the further surgery was indefinitely postponed. He continued to improve markedly, and was discharged from the hospital on March 20th.

I saw him in the office on several occasions after that: On April 5th, on May 3rd—these are all in 1955.

Mr. Roberts: What was the last, Doctor?

A. May 3rd—I say, the dates are all in 1955—and May 24th. He was complaining of some discomfort in his low back, and I called Dr. Cherry as

(Testimony of Edward K. Kloos.)

an orthopedic surgeon, and he was to see Mr. Swanson shortly afterwards regarding his back.

I didn't see him again, then, I think it was, until December 29th, 1955, and he was readmitted to the hospital because he didn't feel just right. I have no specific notes as to the circumstances of his admission here, but, as I recall, he had called me up and my conversation with him was such as to make me feel that he had better be readmitted to the hospital when we could examine him again. At that time he showed some very definitely mental disturbance.

Do you wish me to go into that?

Mr. Morrison: Surely. Go right into that.

A. He had what psychiatrists characterize as delusions of persecution. He later indicated to me that he was sure that [159] the barber at the hospital was after him, and another individual or two were after him, or had ulterior motives of some sort with regard to him. It was felt on neurological examination at that time the only thing that he showed objectively was a questionable positive left Babinski sign, which he had had before. I felt that this was probably an acute psychosis, and Dr. Herman Dickel, a psychiatrist, was called in consultation.

The Court: Acute, you said?

A. Yes. Dr. Dickel felt that he had a psychosis—

Mr. Morrison: I don't believe you could testify, Doctor, to what Dr. Dickel's findings were; just your own.

A. Well, I felt that the problem was associated



(Testimony of Edward K. Kloos.)

with his intercranial injury, and that he may have in the meantime since he had left the hospital and over the period of months developed a chronic subdural hematoma or blood clot, which takes on a lot of fluid and grows over a long period of time, and that we should do an air study in order to try to settle this matter.

This was done January 4th, 1956, and revealed very poor filling or very poor distribution of air in the space between the covering of the brain and the brain itself over the surface.

Q. How is that done?

A. The patient is anesthetized, placed in a sitting position, [160] supported by an assistant, and spinal puncture needles are inserted in the low back and all the fluid is allowed to run out of one and replaced with air through the other needle until no more fluid is obtained. Then the needles are withdrawn, the patient is taken to X-ray, where X-ray films of the head are made. The air in there casts a shadow on the X-ray film and shows all of the spaces both in and around the brain as to their size, shape and position.

Q. Was that normal, did you say?

A. The cavities in the brain appeared to be normal, and there was very little, if any, air over the surface of the brain.

Q. What does that indicate?

A. Well, it sometimes indicates the presence of a blood clot which is located over the surface of the brain and has not allowed the fluid to come out and



(Testimony of Edward K. Kloos.)

the air to replace it. It sometimes indicates adhesions between the brain and the covering. It sometimes may mean nothing. It may simply mean that the brain was held up there by sort of suction and the fluid not allowed to come out.

At any rate, in view of the finding it was felt advisable to reopen the scalp over the old burr holes that had been made in the skull and check to see if there was anything there. I think we reopened that—yes, that was done, and in each instance there was a gush of fluid out of [161] each burr hole that did not appear to be abnormal in either amount or pressure. There was no evidence of subdural hematoma or the abnormal collection of clear fluid nor of adhesions or anything of that nature either. That was done on January 6th. The air study was done on the 4th. By January 12th, 1956, he had become very much depressed mentally, but he again cleared up and was able to be discharged from the hospital on January 18th. He was then seen subsequently on several occasions in the office, on January 24th and February 14th, at which time he stated that he no longer had any dizziness but he still felt generally weak. And on March 20th he said that his head felt fine but that his back was now bothering him.

He was to see Dr. Cherry again regarding the back. Then I didn't see him again until February 4th of this year, and at that time, according to his own evaluation, he felt that he was fine except for

(Testimony of Edward K. Kloos.)

his back as well as in the lower part of the chest he had some aching.

On examination then the objective neurological findings—one of them which I hadn't noted before was some atrophy or wasting of certain muscles in back of the right shoulder blade.

Q. That was just a few days ago?

A. That was just on the 4th, yes, Monday. He was always diffusely tender over the entire low back or lumbar region. [162] He had a bilateral positive Babinski sign. The toe response was abnormal on both sides.

Q. On both sides?           A. Yes.

Q. Now?

A. Now. And he had a positive Hoffman sign, which is a similar thing with regard to the hands, the snapping of the fingers on the left side. All of these, the Babinskis and the Hoffmans, were only moderately positive, but they were definitely so, in my opinion.

My conclusions were that he had a low back strain, which Dr. Cherry was apparently evaluating or had evaluated, but that his major trouble was the residual of his head injury, and that this had resulted in a permanent brain damage.

Q. Is this anything that can be helped by treatment or time?           A. I don't think so.

The Court: Will he get worse?

A. I don't believe I could answer that accurately. I think he may get worse. I don't think he will get better. I think he may get better on a

(Testimony of Edward K. Kloos.)

temporary basis, but I doubt that he will ever get up to what he was before his injury.

Q. (By Mr. Morrisison): Now, Doctor, I wish to refer you to two spinal fluid tests taken in the hospital, one taken on [163] December 31st, 1955, which appears in the hospital record as having been taken on that date, showing bloody fluid. Do you have that there? A. Yes.

Q. That was taken on December 31st?

A. Yes.

Q. And did that show gross bloody fluid in the spinal fluid? A. Yes.

Q. I will also ask you if that didn't show a positive Kahn, an indication of syphilis?

A. Yes; it had a positive sign.

Q. Then two days later did you take another spinal fluid test?

A. I took another one four days later.

Q. Or four days later. Did that show any positive sign? A. No.

Q. Did that show any indication of syphilis at all? A. No.

Q. Do you know whether he has taken blood tests since? A. Well, I believe he has.

Q. Yes. In any event, you didn't consider that he had it? A. No.

Q. What explanation do you make for that blood test, the bloody fluid that showed a positive reaction? [164]

A. Well, the spinal puncture was performed by one of the residents in the hospital and, as occa-

(Testimony of Edward K. Kloos.)

sionally happens, not only to a resident but to anybody performing one, the point of the needle may go through the covering of the cord which you are trying to just enter, go through that space, and part of the point, part of the bevel, enter one of the small veins around the coverings in the spinal canal so that you get both spinal fluid and blood from one of the veins into the needle. Then when these tests, the Kahn or other similar tests, such as Wasserman, and so on, are made they will not infrequently give a false positive.

Q. They will give a false positive?

A. Yes.

Q. Now, the second one, made four days later, was that made by you, yourself? A. Yes.

Q. That was made by you, yourself?

A. Yes.

Q. And it was perfectly negative as to that?

A. Yes.

Mr. Morrison: You may cross-examine.

### Cross-Examination

By Mr. Roberts:

Q. Do you think there was an error, then, Doctor, in that [165] positive finding on the Kahn test?

A. I think unquestionably that was a false positive.

Q. Did you know this gentleman, Mr. Swanson, was seen by Dr. Berg about in March of 1956?

A. I don't believe I have any record of that.

(Testimony of Edward K. Kloos.)

Q. And that Dr. Berg had given him some treatment for a leukocytic condition?

A. I don't know that.

Mr. Morrison: Now, Counsel, I think that the proper way would be to wait until Dr. Berg is called on. Dr. Berg gave that under a misapprehension of what he found up there in the hospital when looking over the records.

The Court: That can be presented in argument.

Mr. Morrison: We brought this to Counsel's attention by giving him that report.

Q. (By Mr. Roberts): Dr. Kloos, isn't it a fair statement that up until the beginning of 1956 you could not give any reasonable explanation for Mr. Swanson's present condition?

A. Would you mind repeating the question?

Q. You could not give any reasonable explanation of Mr. Swanson's condition up to about the beginning of 1956 from a neurological viewpoint, can you?

A. Oh, yes.

Q. Doctor, do you remember writing to Mr. Murray on January 10th, 1956? [166]

A. I think I have a copy of that here.

Q. I am quoting from the last paragraph:

"I believe that this man has a posttraumatic head syndrome accounting for his headaches and other symptoms, and I believe that there was some pre-existing mental condition accounting for his behavior, which probably was aggravated by his injury. I believe that this problem will be recurrent



(Testimony of Edward K. Kloos.)

and it may eventually require active psychiatric treatment.” A. Yes.

Q. That was in 1956? A. Yes.

Q. So at that time you thought Mr. Swanson's troubles were mental rather than any physical injury or brain trouble?

A. I said, “which probably was aggravated by his injury.”

Q. I see. What is the actual injury that you found to the brain? Would it be a condition of scarring of the brain?

A. I believe this man had severe contusions of the brain.

Q. Contusions? A. Yes.

Q. There is no pressure or anything like that into the brain itself, is there?

The Court: What do you mean by [167] contusions”?

A. Contusions are bruises. If they occur on the surface of the brain, there is a lot of—if you could look at it, there is a lot of blueness and engorgement of the vessels, an appearance comparable to a bruising or contusion of the skin of a part of the body. If it occurs in the substance of the brain—and I believe it would be difficult to say that it occurs only on the surface and not in the substance—there usually are innumerable minute, maybe microscopic in size, hemorrhages due to breaks of small vessels in the brain substance. They can be determined and found only if portions of the brain are removed for examination under a microscope.



(Testimony of Edward K. Kloos.)

Q. So, to summarize it, in your opinion, there are contusions of the brain?

A. I think there is no question he had a cerebral contusion.

Q. And that has been continuing there, Doctor?

A. Pardon?

Q. That has been continuing there?

A. This condition has caused permanent damage.

Q. Does that have any reaction as far as the rest of the body is concerned?

A. It depends on what parts of the brain it occurred in. Contusions can occur—if they occur in the part of the brain that, for instance, is in the motor area, the area that controls motion, there could be a paralysis and this [168] marked weakness resulting.

Q. Have you located any such damage to any of that particular part?

A. The indications in Mr. Swanson are that the contusions were more or less diffused and involving, to some extent, parts of the motor areas also to produce his positive Babinski signs which are involved in that manner.

Q. Doctor, did you know that on the hospital record it is indicated that on the 10th of February, 1955, Mr. Swanson fell out of his bed in the hospital?

A. I have no record of that in my records, but I have no reason to quarrel with what is in the hospital record.

(Testimony of Edward K. Kloos.)

Q. I read the hospital records last night, Doctor. I notice the nurse during the time he was in there the first time, up until the time of the operation, at least, keeps on using the word "lethargic" as to his condition. A. Yes.

Q. What does that mean?

A. Well, I used the term semi-comatose, and that can be in various degrees. The nurses frequently use the word "lethargic," but we don't very often.

Q. What is that?

A. It means very drowsy or stuporous. It can be to any degree.

Q. During this first hospitalization you had Dr. Philip [169] Selling, did you not?

A. Yes; Dr. Philip Selling. I discussed him with Dr. Philip Selling, I believe, on the 16th of February, 1955.

Q. What are spastic attacks?

A. It is an inco-ordination in which the muscles are also stiff and have increased tone.

Q. Was there any indication prior to the first operation of any spastic attacks?

A. I haven't made any mention of that in my records.

Q. You say you had Mr. Swanson as a patient through Dr. Cherry? A. Yes.

Q. Did Dr. Cherry treat him first or did you treat him initially? I notice the hospital records have all been crossed out that had Cherry on and your name substituted. A. May I explain?

Q. Yes.

(Testimony of Edward K. Kloos.)

A. I believe that Dr. Cherry is a member of a group of doctors, Blair, Thatcher, Davis & Cherry.

Q. Yes.

A. And a large percentage of injuries on the docks are sent to the hospital in their name.

Q. I see.

A. Because they are orthopedic surgeons, and many of these [170] injuries are of an orthopedic nature. Dr. Cherry was informed—I don't know whether by telephone or whether he was at the hospital—to see Mr. Swanson, but it was determined that this was primarily a head injury so he called me. Now, whether he had treated him first or not I doubt very much.

Q. Doctor, did you notice any injury or abrasion to either of Mr. Swanson's legs or in his waist area or in his upper chest?

A. Well, I don't recall, and I have no record of that in my own records.

Q. According to your direct testimony, however, he left the hospital and he seemed to be all right, did he?      A. He seemed to be improving, yes.

Q. Then when you saw him on the 5th of April, on the 3rd of May and on the 24th of May, during that period did he have any trouble with his head? Was he complaining of any sensory loss?

A. This is in '55, you mean?

Q. Yes.

A. No. He said on the 24th of May that he felt that his head was all right.

Q. And he had back trouble?

(Testimony of Edward K. Kloos.)

A. But he was having back trouble.

Mr. Morrison: May of what year? [171]

A. Of '55.

Mr. Morrison: That is before the second operation?  
A. Yes.

Q. (By Mr. Roberts): Had he said anything about back trouble while he was in the hospital the first time?  
A. When he was——

Q. When he was in the hospital the first time?

A. No; not to my knowledge. But he wasn't saying very much about anything then.

Q. When he called you on the 29th, Doctor, what did he say was the matter with him? That he was just not feeling well?

A. Well, I can't definitely say that he called me, but I believe that that is how he got into the hospital. Now, whether he called me or whether he came to the office first and I admitted him to the hospital from there I can't be certain of. He was complaining of not feeling right. He said he had only occasional headaches and not recently. Then he went into the hospital, and when I talked with him after he had been admitted he spoke of his fear of the hospital barber and someone else. He was very much agitated about that particular situation.

Q. Doctor, do you remember writing a letter of March 22nd, 1955, indicating that Mr. Swanson had been to your office once or twice and that it might take another month or so before [172] he was able to return to work?

(Testimony of Edward K. Kloos.)

Mr. Morrison: What was the date of that?

Mr. Roberts: March 22nd, 1955.

Mr. Morrison: That was before the second operation?

Mr. Roberts: Yes. I think it was addressed to Gray & Lister.

A. Yes.

Q. At that time you thought he would be able to return to work?

A. I thought he would recover.

Q. And also on April 7th, 1955, you indicated that he had made a good recovery or was making a remarkable recovery from a mental standpoint but that he was weak physically and that it would be best for him not to return to work for at least another month and maybe even longer?

A. Yes.

Q. I think you wrote to Dr. Cherry on May 5th, 1955? A. I did.

Q. In that letter you indicated that you hoped he would be able to return to work some time within the next 60 to 90 days; is that correct?

A. Yes.

Q. Was it upon that second hospitalization that you formed the opinion that he would not be able to return to work; that is, to the work that he was doing? [173]

A. Exactly when I formed that opinion would be impossible to say, because that opinion is based on events with the passage of time and the general indication of lack of improvement, all of which

(Testimony of Edward K. Kloos.)

would indicate that the brain damage, organic brain damage, had caused some permanent changes which time alone could give you the answer to.

Q. Have you any opinion, Doctor, as to whether he has had any pain in his head?

A. On occasions he has had some headaches, and then on occasions he says he has none.

Q. You haven't examined him or given any opinion from an orthopedic viewpoint, have you?

A. No; I haven't.

Q. Who was the treating doctor from an orthopedic viewpoint from the time you had him under your care?

A. Dr. Cherry, I believe.

Mr. Roberts: I think that is all, Dr. Kloos.

### Redirect Examination

By Mr. Morrison:

Q. Just one question, Doctor. Do you consider him permanently and totally disabled?

A. I do.

Mr. Morrison: That is all.

The Court: What do you mean by "totally disabled"? [174] Can he go back to work?

A. Yes. I don't think he could hold a responsible position because of the tendency for him to have these mental—or these acute or subacute psychotic episodes.

The Court: Could he go back to longshoring work where they work in teams?



(Testimony of Edward K. Kloos.)

A. I doubt it very much. I don't think he would be reliable.

The Court: Mr. Roberts?

Recross-Examination

By Mr. Roberts:

Q. As far as mental stability is concerned, you think that the injury may have aggravated some other condition that was already there; is that it?

A. I believe it is possible that he may have had a tendency to be unstable and that an injury such as this is enough to remove all the controls.

Mr. Roberts: Thank you.

Redirect Examination

By Mr. Morrison:

Q. Doctor, were you advised by anybody that knew him before of any instability prior to this?

A. I don't believe I was, no. [175]

Mr. Morrison: That is all.

The Court: That is all. Thank you, Doctor.

(Witness excused.)

## FLORENCE BUNT

was produced as a witness in behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Morrison:

Q. State your name, please?

A. Florence Bunt.

Q. Is it Miss or Mrs.?           A. Mrs.

Q. Where do you live, Mrs. Bunt?

A. 80 Northwest Birdsdale.

Q. Do you work?           A. Yes; I do.

Q. What do you do?

A. I am a practical nurse.

Q. Where are you employed? [176]

A. I am employed at Mrs. Sadler's Convalescent Home.

Q. Do you know Guy Swanson?           A. Yes.

Q. How long have you known him?

A. 1946.

Q. Since 1946. Did you live near him?

A. Yes, we did. We lived at the Government units, Guild's Lake.

Q. About how long did you live near him?

A. We lived there about two and a half years.

Q. Now, what was his general condition during that time?           A. He was very friendly.

Q. I mean his health.

A. His health was very good.

Q. How about his disposition?

A. Friendly.

(Testimony of Florence Bunt.)

Q. Friendly? A. A good neighbor.

Q. What is that? A. A good neighbor.

Q. What about his mental condition during that time?

A. I would say it was good at that time.

Q. Have you seen him since? A. Yes.

Q. About how many times? [177]

A. Oh, on different occasions in 1955.

Q. Have you noticed any change in the man?

A. Well, the first time I saw him after I moved out of Guild's Lake was in 1955 at Mrs. Sadler's. He come by one day, and we had a patient sitting on the porch and he was talking to him, and I was shocked at his eyes and his walk and his speech. It was incoherent.

Q. What do you mean about his eyes?

A. Glassy.

Q. Did he have that before? A. No.

Q. How about his conversation?

A. Well, it didn't seem to make too much sense to me.

Q. Have you seen him since that occasion?

A. Oh, a time or two.

Q. How was his conversation on those occasions?

A. Well, I would say he wasn't his self.

Q. He was not?

A. I would say there was a little mental condition there.

Q. Did you notice anything of that nature before this accident? A. Never.

Mr. Morrison: You may cross-examine. [178]

(Testimony of Florence Bunt.)

Cross-Examination

By Mr. Roberts:

Q. How many times have you seen Mr. Swanson since the 9th of March, 1955?

A. How many times since 1955?

Q. Yes. A. Oh, several times.

Q. What is several times, Mrs. Bunt?

A. Well, he used to take a little walk, and we would have this patient on our porch and he would walk by. I didn't see him every time, but occasionally.

Q. How many times do you think you have talked to him?

A. Oh, maybe a dozen times.

Q. About a dozen times? A. About.

Q. Do you know where he was living?

A. Well, I don't know the number of his apartment, but it was about a block and a half from where our institution is.

Q. Do you know whether he was taking care of himself or not?

A. You mean taking care of himself? That I wouldn't know.

Q. Of course, you don't know whether he could be a good neighbor now or not, do you?

A. Well, I haven't been in his apartment since we lived [179] out at Guild's Lake.

Q. Has he changed very much physically as far as his weight is concerned?

(Testimony of Florence Bunt.)

A. Yes. I went home and commented on it the first time I saw him. I was shocked.

Q. In what way?

A. Well, he just wasn't Swanson as far as I am concerned.

Q. I am talking about his weight. Has he lost any weight?      A. Yes.

Q. You think he has lost weight?

A. He weighs less than he did when we knew him in Guild's Lake.

Q. You knew him in Guild's Lake in 1946?

A. That is right.

Q. Was he married at that time?

A. Not to my knowledge.

Mr. Roberts: That is all, Mrs. Bunt.

Mr. Morrison: That is all.

(Witness excused.)

(Short recess.) [180]

### LOYAL BUROKER

was produced as a witness in behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Morrison:

Q. Your name, please?

A. Loyal Buroker.

Q. Mr. Buroker, where do you live?

(Testimony of Loyal Buroker.)

A. Now I am living on a little farm between Troutdale and Gresham.

Q. Have you lived in this area for some time?

A. I have lived around Portland since 1941.

Q. What business are you engaged in?

A. Insurance sales.

Q. General insurance?                   A. Yes.

Q. Do you know Guy Swanson?

A. Yes; I do.

Q. Approximately how long have you known him?

A. I have known Guy a little better than four years.

Q. Did you see him quite frequently before this accident?

A. Yes; I did. We had some mutual friends and I saw him quite often.

Q. Did you have business dealings with him?

A. Yes. [181]

Q. Did you sell him insurance?                   A. Yes.

Q. What on?

A. I sold him insurance on his automobile, and shortly after that I sold him some insurance on a home that he was in the process of building.

Q. Was he in the process of building a home at the time when this accident occurred?

A. Yes.

Q. Do you know whether he later disposed of that home he was building?

A. I heard that because he couldn't complete it; he had to——



(Testimony of Loyal Buroker.)

Q. Well, never mind. You can't testify to what someone else told you. You sold him insurance on this home he was building before the accident?

A. Yes.

Q. Now, what was the condition of his general health before this accident?

A. As far as I observed, he was a normal individual; friendly. He was always very friendly with me.

Q. I mean his general health.

A. His general health seemed to be good.

Q. How about his disposition?

A. Perfectly normal, I would say. He was always friendly. [182] I got along with him very well.

Q. How about mentally? Did you notice anything odd about him before this accident?

A. Beg pardon?

Q. Did you notice anything odd about his mental characteristics before this accident?

A. No; I can't say that I did.

Q. Now, since the accident, have you noticed any change in his condition?      A. Quite a bit.

Q. What is that change?

A. Oh, many times he has been quite irrational in his talk. He says someone is always giving him a bad time.

Q. You mean persecution?

A. Yes; I suppose that is probably what you would say. Always somebody who is—to sum it up the best I know how—trying to give him a bad time.

(Testimony of Loyal Buroker.)

Q. Did you notice him talking that way before the accident?

A. He never had. He never had to me, no.

Q. Does he walk around the same as he did before?  
A. No, no.

Q. He doesn't. What do you notice different in that?

A. Well, I have seen times when he could hardly walk. I mean his gait is nowhere near what it was before. He walked like a normal individual who was doing a normal day's work, [183] and since that time a number of times that I have visited him he just couldn't get around as a normal man should.

Mr. Morrison: You may cross-examine.

#### Cross-Examination

By Mr. Roberts:

Q. You say he gave you the impression that somebody was giving him a bad time since the accident?  
A. Yes.

Q. Of course, he didn't have any litigation or anything pending before this accident that you knew of, did he?  
A. No; not that I know of.

Mr. Roberts: I think that is all.

(Witness excused.) [184]

RUBY COITEUX

was produced as a witness in behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Morrison:

Q. What is your name, please?

A. Ruby Coiteux.

Q. Where do you live?

A. 6109 Southeast 92nd.

Q. Do you work? A. Yes.

Q. By whom are you employed?

A. Stacey's Cleaners, machine presser.

Q. Are you acquainted with Guy Swanson?

A. Yes.

Q. How long have you known him?

A. Oh, about 13 years.

Q. Were you engaged to marry him before this accident happened? A. Yes.

Q. How long had you been going out with him before that, approximately?

A. I imagine about four months.

Q. But you had known him for a long time?

A. Yes. [185]

Q. Was he building a house at the time?

A. Yes; he was.

Q. At the time this accident occurred?

A. Yes.

Q. And had he rented an apartment just before the accident occurred? A. Yes.

(Testimony of Ruby Coiteux.)

Q. Had you planned this marriage in a short time?      A. That is right.

Q. Has he since disposed of the house?

A. The house, yes.

Q. What was the condition of his general health before the accident?

A. I would say it was good.

Q. How about his disposition?

A. He had a very pleasant disposition.

Q. A pleasant disposition?

A. Yes; very pleasant.

Q. How about his mental condition?

A. It was good.

Q. Now, when he was taken home from the hospital the first time where was he sent? Where did he go?      A. My sister's.

Q. He went to your sister's?

A. Yes. [186]

Q. Was there any incident that occurred while he was there about this apartment he had rented?

A. He couldn't remember that he had rented it.

Q. He couldn't remember that he had rented his apartment?

A. No. He would have went right straight home if he could have remembered it.

Q. But he had forgotten he had rented this apartment?      A. Yes; he forgot all about it.

Q. Have you noticed any changes in him since?

A. Oh, all the difference in the world. He is just not the same person.

Q. Have you noticed any difference mentally?

(Testimony of Ruby Coiteux.)

A. Well, he seemed depressed.

Q. Have you noticed any difference in his conversation?

A. Well, he keeps repeating himself.

Q. You say he keeps repeating himself?

A. Yes.

Q. Have you noticed any tendency towards feeling that people have it in for him?

A. Well, he seemed to think everyone was against him.

Q. What is that?

A. He seemed to think everyone was against him.

Q. Was he that way before the accident?

A. Oh, no.

Q. How about his general appearance, the way he walks, his [187] gait? Do you note any difference in that?

A. Oh, yes. He can't—it is awfully hard for him to walk.

Mr. Morrison: You may cross-examine.

#### Cross-Examination

By Mr. Roberts:

Q. He has expressed some sort of, shall I say, animosity towards the shipping company and the stevedoring companies since the accident, hasn't he?

A. Well, I guess he sort of thinks they are against him, if that is what you mean.

Q. He sort of thinks they are against him?

A. Yes.

(Testimony of Ruby Coiteux.)

Q. And some of the doctors who have been engaged in treating him and even some of the lawyers?

A. Yes.

Mr. Roberts: That is all.

Mr. Morrison: That is all.

(Witness excused.) [188]

GUY W. SWANSON

the plaintiff herein, resumed the stand and was further examined and testified as follows:

Cross-Examination

(Continued)

By Mr. Roberts:

Q. How are you feeling this morning, Mr. Swanson? A. Oh, I don't feel very good.

Q. Pardon? A. I don't feel very good.

Q. Would you speak a little louder?

A. I don't know if I can. I don't feel good.

Q. You don't feel so good this morning?

A. No; I don't.

Q. Who has been taking care of you since the accident?

A. What do you mean, taking care of me?

Q. Are you living by yourself in your apartment? A. Yes; I am living alone.

Q. Do you cook your own meals and make your own bed? A. Not altogether, no.

Q. Do you eat out like most bachelors?

A. My girl friend comes over and cooks a meal once in awhile.



(Testimony of Guy W. Swanson.)

Q. Your girl friend comes over and cooks a meal sometimes?

A. She comes over pretty regular. That is what I should say.

Q. Do you eat out at all? [189]

A. No; I don't. I can't.

Q. How have you been living the last two years, Mr. Swanson? Have you been using your savings?

A. Why, certainly.

Q. I see. You have a bank account, do you?

A. No.

Q. Not now?

A. I pay for everything as I go along.

Q. Have you had any accidents since the accident on the boat, like falling down or anything like that?

A. Since the accident when I got hurt——

Q. On the boat. A. Since I got hurt?

Q. Yes. A. I haven't been on a ship since.

Q. No; I mean have you fallen down on the street or in your apartment?

A. No, no. I stay off my feet all the time.

Q. You have had no automobile accidents or anything like that? A. No, no, no.

The Court: Does he drive a car?

The Witness: No.

Q. (By Mr. Roberts): Do you drive a car?

A. No, no; I can't drive it. [190]

Q. Have you got a car?

A. I have got a car, yes.

Q. When have you driven?

(Testimony of Guy W. Swanson.)

A. I can't get in and drive it.

Q. You can't drive it?

A. The battery is run down, for one thing. It has not been started for a year and a half.

Q. But you have not been driving since the accident; is that right?

A. Well, I drove it once or twice, when I was getting therapy treatments. Then I might drive it once in a while, but since then I haven't.

Q. Do you wear glasses?

A. I do, but they don't fit me any more.

Q. Did you wear them before the accident?

A. Oh, yes.

Q. Just for reading?

A. I wore reading, and I had all-purpose glasses.

Q. All-purpose glasses?

A. But my all-purpose glasses don't fit me the way they should.

Q. Mr. Swanson, have you had any treatment from Dr. Cherry since the second time you were in the hospital?

A. He always sent me out for this therapy.

Q. Therapy treatments? [191]

A. Yes.

Q. That was for your back?

A. They put a heat lamp on my back.

Q. Where is the pain in your back?

A. On the lower part. It is the lower part, and then right through here and over (indicating).

Q. Right through your chest and right in the back?

(Testimony of Guy W. Swanson.)

A. I can't reach around—it is in the back and then over.

Q. Sometimes it will go over this way, to either side?

A. Oh, not so much over here. It is really over here, from here on over (indicating).

Q. From the middle over to your right side?

A. To the right side, yes.

Q. Are you able to lift your hands up?

A. Yes; I can raise them up.

Q. Can you write letters?

A. Well, I can write, yes.

Q. And sign your name?

A. Yes; but not nearly as good as I used to do it.

Q. How old are you now? 55?

A. This is '57, isn't it? I am 55, yes.

Q. I think you testified yesterday you go to the grocery store now to buy your groceries?

A. Yes; just around the corner.

Q. Do you usually walk? [192]

A. That is the only way you can get there.

Q. How did you get around in the recent snow and ice? A. I don't get out too much.

Q. When you did get out, did you get around all right?

A. I was awful careful. You had to be. I didn't want to fall down and hit my hip. One thing, they keep the sidewalks clean around there pretty much.

Q. Have you had any treatment other than Dr. Kloos and Dr. Cherry? Have any other doctors actually treated you, given you some injections or

(Testimony of Guy W. Swanson.)

some medicine?           A. No.

Q. Has Dr. Berg given you any treatment?

A. No.

Q. None whatsoever?           A. No.

Q. He just looked you over?

A. Just looked me over.

Q. How long did that take?

A. Well, I don't know. That I couldn't say.

Q. Have any of the doctors indicated that you should have an operation or anything on your back?

A. One doctor—I don't know who he is now—he says this was—is there a Dr. Raaf or somebody?

Q. Yes.

A. I was up to his office, and then he called some other [193] doctor in, and this doctor says, "Why don't you let Cherry operate on you?" Well, I never said a word. I never said a word.

Q. Who sent you up to Dr. Raaf, do you remember?           A. No; I don't.

Q. Have you tried to go back to work, Mr. Swanson?

A. No; I can't go down—I can't even go down—they wouldn't even hire me at the window.

Q. Haven't you tried to do some work?

A. I can't do nothing. I know I can't do nothing.

Q. Have you tried other than knowing that you cannot?

A. I don't know what I would do. I went out here the other day and carried—I had a set of chains in the back of the car, so I got them out and

(Testimony of Guy W. Swanson.)

I carried them up to the room, and I didn't think I was going to get up there with them.

Q. A set of chains?

A. Yes; a set of chains, brand new ones, in the truck.

Q. Can you work down at the hiring hall or the dispatcher's office or anything?

A. You are voted in—you have got to be there and you have got to be voted in for them jobs.

Q. I see.

A. They don't appoint somebody. You are voted in.

Q. The union votes you in for that? [194]

A. Yes.

Q. Do you think you could do that type of work?

A. No; I don't.

Q. Why not?

A. Well, I can't stand somebody looking over me. They would run you ragged.

Q. You don't like to do that clerical office work?

A. No.

Q. Answering telephones?

A. You wait for them to take a job—I wouldn't have it when I was feeling good.

Q. You would rather do the physical work?

A. I would sooner do the physical work.

Q. Down in the hold?

A. Certainly. That is the best work there is.

Q. Pardon?

A. That is the best work there is.

Mr. Roberts: I think that is all.

(Testimony of Guy W. Swanson.)

Redirect Examination

By Mr. Morrison:

Q. Mr. Swanson, one thing I neglected to ask you: Were you building a house before this thing happened? A. Yes.

Q. You were? [195] A. Yes.

Q. Was it finished when this accident happened?

A. I just had the windows in and the doors and the shakes on. The inside wasn't finished yet.

Q. The inside was not finished?

A. No, no.

Q. You had rented this apartment and you were going to get married; is that right?

A. That is right; yes.

Q. Have you since sold this house?

A. I sold it, yes. It was standing there vacant, and I had to get rid of it, sir—somebody going in and out, you know. You can't trust people.

Q. So you sold the house since the accident?

A. Oh, yes, yes. I had no other way, you might say.

Q. The inside had not been finished?

A. Oh, no. I had to sheetrock two places in.

Q. Where was it located?

A. Right off of Glisan, a three-bedroom house.

Q. A three-bedroom house? A. Yes.

Mr. Morrison: That is all. [196]



(Testimony of Guy W. Swanson.)

Recross-Examination

By Mr. Roberts:

Q. One thing more, Mr. Swanson. Do you recognize the fellows who testified yesterday from the gang?  
A. Yes; I knew those fellows.

Q. You knew all of them?

A. I knew all of the gang men, yes. I recognize this fellow here (indicating).

Mr. Wood: I wasn't in the gang.

The Witness: But you I can't recognize. I don't remember you.

Q. (By Mr. Roberts): You saw all of the fellows in the gang yesterday and you remembered them all?  
A. Oh, yes.

Q. Mr. Lundstrom?

A. He was my boss, yes.

Q. The gang boss. And you remember your partner, Mr. Uskoski?  
A. Yes.

Mr. Roberts: That is all.

Questions by Mr. Wood:

Q. Mr. Swanson, I think it is kind of a compliment to me. How do you happen to remember me and not this gentleman?

A. You sat beside me up there. [197]

Q. Did I?

A. I can remember you, but I can't him.

Mr. Wood: I see. That is all.

Mr. Morrison: That is all.

(Witness excused.)

Mr. Beebe: May it please the Court, Paragraph VI of the plaintiff's contentions, the damages were left blank because we had to get the medical damages and the medical expenses together. We would like leave to insert the sum of \$2,053.60 in Paragraph VI. It is my understanding that we have a stipulation——

Mr. Roberts: What is that, now?

Mr. Beebe: \$2,053.60. That if proper witnesses were called as to those expenses they would testify as follows with respect to the medical expenses:

Buck Ambulance Service, \$15.00—and that they were reasonable—Edward K. Kloos, \$225.00; St. Vincent's Hospital, \$581.95; St. Vincent's Hospital, \$296.30; Providence Hospital, \$38.50; Drs. Blair, Thatcher, Davis & Cherry, \$23.00; Coast Orthopedic Company, \$21.50; Dr. Corbin, \$35.70; Dr. Kloos, \$5.00; the Portland Clinic, \$25.00.

Now, your Honor, those that I have read total \$1,266.95. Those were paid by the stevedoring company, and [198] I understand that if there is a recovery here Mr. Swanson is obligated to reimburse them to that extent.

In addition to those, to Dr. Kloos for his second operation, the second time he went to the hospital, \$225.00; \$35.00 to Dr. Richard Berg; \$35.00 to Dr. C. Todd Jessell for X-rays; and a second hospital bill of \$491.65, St. Vincent's Hospital, covering the second hospitalization, or a total of \$2,057.60.

So stipulated?

Mr. Roberts: So stipulated.

Mr. Wood: Yes; we will stipulate, also.

Mr. Morrison: We rest, your Honor.

(Plaintiff rests.)

Mr. Roberts: Your Honor, I would like to make a formal motion in behalf of Oceanic Steamship Company for dismissal of plaintiff's complaint on the ground and for the reason that there is no showing by any preponderance of the evidence as to the means and the manner in which the accident occurred and whether it resulted indirectly or directly as a result of any unseaworthiness of the vessel or any negligence on the part of its operators, officers or owners.

The Court: Motion denied.

Mr. Roberts: Your Honor, the defendant will then call [199] Captain Cuthbert.

### W. H. CUTHBERT

was produced as a witness in behalf of the Defendants and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Roberts:

Q. Would you state your full name, please?

A. Wilbur Henry Cuthbert.

Q. What is your present occupation, Captain Cuthbert?

A. At the present time I am Captain of one of the Matson ships.

Q. Which one? A. Hawaiian Retailer.

Q. When did that ship reach the United States?

(Testimony of W. H. Cuthbert.)

A. Monday, February 4th.

Q. And you came straight up here to the trial?

A. Yes.

Q. On the 9th of February, 1955, in what capacity were you serving?

A. I was Chief Mate on the Ventura.

Q. On the S.S. Ventura?

A. S.S. Ventura.

Q. Who owns and operates that ship?

A. The Oceanic. [200]

Q. It is a subsidiary of Matson? A. Yes.

Q. What kind of a vessel is the Ventura?

A. What do you mean, what kind of a vessel?

Q. Well, I mean what is her classification?

A. They call it a C-2.

Q. What trade was she in at the time, Captain?

A. Running on the Coast here and to Astoria.

Q. How long had you been on the Ventura prior to the accident which occurred the 9th of February, 1955?

A. A little over four years.

Q. And you were chief officer during that period?

A. Yes.

Q. Do you remember the day of the accident, or were you advised of the accident?

A. After it happened, yes.

Q. You never saw it yourself? A. No.

Q. Did any of your ship's officers or crew see or report it to you?

A. I don't remember whether any did or not. No one reported to me. I don't even recollect who it was that did tell me.

(Testimony of W. H. Cuthbert.)

Q. At any time prior to the accident had anyone from the stevedoring company reported to you or any of your personnel about any complaints about the hatch boards? [201]

A. No; no one made any complaint.

Q. This vessel was fitted with steel hatch covers; is that correct? A. Yes.

Q. Do you remember the port of call of the vessel before she came to Portland?

A. Yes; Yaquina Bay.

Q. Do you know who does your stevedoring for you down there? A. Independent.

Q. Was the vessel worked at Yaquina Bay?

A. Yes.

Mr. Roberts: Your Honor, I would like to hand the witness Defendants' Exhibit 56. It is admitted in evidence?

The Court: It is admitted.

Mr. Roberts: Thank you.

Q. Captain, that is a blueprint of the hatch system on the Ventura or the C-2 type ship; is that correct? A. That is correct.

Q. Did you have a similar sort of blueprint in your cabin on the vessel?

A. Yes, but this is a full size. It takes in the whole ship.

Q. You are familiar with that particular blueprint, are you, Captain? [202] A. Well, yes.

Q. What kind of hatch covers did you have in the lower 'tween deck on No. 3?

(Testimony of W. H. Cuthbert.)

A. What do you mean? We have already said they were metal hatches.

Q. They are metal hatches, are they?

A. Yes.

Q. What are the sizes of the hatches?

A. Well, we have two different—what do you mean? In each section?

Q. Well, in the hatch openings.

A. Well, in the upper section we have two different sizes, and we have the lower section, which is the section where the accident happened, and that has two different sizes.

Q. How many sections are there in the lower 'tween deck? A. There is eight sections.

Q. Can you tell us the measurements in feet or refresh your recollection by looking at the blue-print?

A. Well, I would say if we started from the forward end we have got a smaller sized section there. According to the plan here you have got a size there of—we call the hatches usually 24 inches wide, see, but they trim them down a little bit to fit them in, because the hatches—the width across is 20 feet, so they have got to narrow it down, so they run around  $23\frac{7}{8}$  inches wide by 4 feet and  $\frac{3}{4}$  [203] inches.

Q. By 4 feet what?

A. 4 feet and  $\frac{3}{4}$  of an inch.

Q. Where is that?

A. That is in the forward end.

Q. Are you certain about that?



(Testimony of W. H. Cuthbert.)

A. That is the forward section. Here is the forward end, isn't it? One, two, three, four, five—you have got five sections.

Q. So they are  $23\frac{7}{8}$  wide?

A.  $23\frac{7}{8}$ . That is what I say.

Q. How long are they?

A. Well, oh, they are four feet and three-quarters of an inch.

Q. Did you say three-quarters of an inch or three and three-quarters inches?

A. No; three-quarters of an inch, 4 feet no inches and  $\frac{3}{4}$ .

Q. How many sections are that size?

A. We have got one, two, three, four, five—five sections.

Q. That is in the forepart of the hatch; is that correct?      A. Yes.

Q. What are the sections in the after part of the hatch?

A. Well, they are larger. I mean they are the same width,  $23\frac{7}{8}$  inches, but they are larger and there is three sections of those,  $23\frac{7}{8}$  by 4 feet  $8\frac{3}{4}$ .

Q.  $8\frac{3}{4}$ ? [204]      A. Yes.

Q. So there is a difference of 8 inches in the three after sections and the five fore sections: is that right?      A. That is right.

Q. How many crossbeams in that hatch opening in lower 'tween deck No. 3?      A. Seven.

Q. Seven. Is there a diagram or a sketch of that crossbeam on that blueprint?

A. What do you mean? It shows an end section.

(Testimony of W. H. Cuthbert.)

Q. Yes, but is there a separate diagram on there showing the specifications?

A. Yes; there is.

Q. Will you look at it, Captain? A. Yes.

Q. Have you found it? That is the lower No. 3 hold, lower 'tween deck? A. Yes.

Q. Is that correct? A. Yes.

Q. How wide is that particular beam?

A. You mean wide on the top side, I suppose?

Q. That is on the top side on which the hatches rest? A. Well, it is  $8\frac{1}{4}$  inches.

Q.  $8\frac{1}{4}$  inches. It so indicates on there? [205]

A. Yes.

Q. Does it indicate on there the thickness of the flange or the divider?

A. Yes. We usually call it the hatchboard spacing bar, and it spaces in between the hatches so they fit in there. Well, that is one-quarter of an inch.

Q. How high is that spacing bar?

A. That is an inch and a half.

Q. An inch and a half. Does that blueprint indicate the width of these steel hatch covers?

A. The width of them?

Q. Yes. A. Yes.

Q. What is the width?

A. An inch and three-quarters.

Q. An inch and three-quarters. Also, looking at the strongback or the crossbeam, whatever you wish to call it—what do seamen call those things? Are they strongbacks or crossbeams, or what?

(Testimony of W. H. Cuthbert.)

A. Well, we call them beams, ordinarily, when we—longshoremen say they beam up.

Q. Longshoremen call them strongbacks?

A. Well, they really call them—you can call them strongbacks. They are really hatch beams.

Q. They are hatch beams. And do the strongbacks fit into [206] your hatch openings?

A. Well, they fit into chocks here that are welded to the side of the hatch coaming on the inside. They call them slots, and so on, but actually they are chafing chocks.

Q. What is the measurement of the crossbeam or the strongback that fits into the chock? What is the dimension there?

A. You mean the part that goes in?

Q. That slides in, yes. What is the width of that, do you know?

A. What do you mean? How much it goes down, the depth?

Q. Yes. What is the distance there?

A. Oh, 9 inches.

Q. 9 inches. What is the actual measurement of the crossbeam itself? A. 10 inches.

Q. So there is a difference of one inch there; is that correct? A. Yes.

Q. So there is a 9-inch container and the crossbeam itself is 10 inches; is that correct?

A. Yes.

Q. So the crossbeam may be an inch above that—— A. Yes; it sits a little above.

Q. Captain, in your experience are these seven

(Testimony of W. H. Cuthbert.)

crossbeams or strongbacks interchangeable at this particular location? [207]

A. Yes; they are. We don't like to get them in the other hatches. As long as they stay in one hatch they are interchangeable.

Q. They are all the same length, though, are they?

A. They are supposed to be all the same length, standard length.

Q. Do you experience trouble sometimes in getting those in?

A. Yes; they will get jammed in there. Sometimes they get one end down a little bit farther than the other, and they get stuck in there. Because, after all, they are supposed to fit in there snug, you know.

Q. Who replaces those strongbacks or hatch boards after the vessel has been loaded?

A. The longshoremen.

Q. Do you ever get any debris down into the slots? A. Occasionally, yes.

Q. Would that keep the beam from going all the way in?

A. Some, yes. It depends upon how hard—it might be a piece of wood and it would crush down. It might be a piece of metal. It depends upon what they are loading.

Q. Captain, look at that blueprint again that you have in your hand. Can you advise the Court what the amount of play is in between the hatch dividing bar and the hatch board itself? You said the board

(Testimony of W. H. Cuthbert.)

in the after end is  $23\frac{7}{8}$  by [208] 4 feet  $8\frac{3}{4}$ ; is that correct? A. Yes.

Q. That board goes into an opening how wide and how long? Do the plans indicate that?

A. You mean where it fits into—on the bottom, where it fits in place, where it is made secure?

Q. Doesn't the blueprint indicate the length there?

A. Well, yes, it does. It gives a difference here of—the actual length is about—the board, we will say, the length is 4 feet  $8\frac{3}{4}$ . All right. The actual length there is 4 feet  $9\frac{1}{2}$  inches.

Q. So you have got  $\frac{3}{4}$  of an inch play there each time you put the board down; is that correct?

A. Yes.

Q. On the ship as it was constructed?

A. That is right. It is snug.

Q. Now, Captain, had you had any complaints from anyone regarding the hatch boards on the 9th of February, 1955?

A. No; not until it happened. Yes; after.

Q. After the accident had happened?

A. After it happened, yes.

Q. Had anyone drawn your attention to the fact that any of the boards were dished or were unsafe?

A. No; no one did. There was nothing said along the Coast. We had been using the same hatch boards along the Coast, although [209] we hadn't loaded that particular hatch. It was empty. We walked on it. They had been walking on it and putting them

(Testimony of W. H. Cuthbert.)

in and taking them out, and we had loaded the lower hold, but we didn't use the 'tween decks.

Q. You didn't use the 'tween decks until the lower hold had been loaded?

A. We had discharged during the voyage and there had been no complaints.

Q. Do you remember at the time you got to Portland what the headroom in the lower hold of No. 3 was?

A. Well, I call it 7 foot to the beams.

Q. 7 foot to the beams?

A. Yes; that is, under the beams.

Mr. Roberts: That is all.

#### Cross-Examination

By Mr. Wood:

Q. Captain, the Chief Mate of the vessel is the one in general charge of its equipment, is he not?

A. Yes, sir.

Q. And is responsible for its maintenance and repair, is he not? A. That is right.

Q. In pursuance of that duty he has to periodically inspect the equipment, doesn't he? [210]

A. Correct.

Q. Had you periodically inspected the condition of these hatch boards? A. Yes.

Q. How recently before this accident had you looked at them?

A. In the last port I had looked at them, in Yaquina Bay.

Q. At these hatch boards?



(Testimony of W. H. Cuthbert.)

A. Yes, at the time they were taking them off.

Q. So you knew their condition there?

A. I knew their condition, yes.

Q. There wasn't any reason, then, for the stevedoring company to tell you what their condition was?

A. Well, no. Sometimes they differed in what we think. We consider the hatches perfectly all right and they don't. So if they say so, why, we try to change them. We will change the hatch boards.

Q. Have you seen the pictures of these hatch covers that have been introduced in evidence here?

A. Yes; I have seen them.

Q. The dished condition that is shown on the photographs?

A. Well, dished, yes, is what they call it. But it isn't much, what we call——

Q. Whatever you call it, you have seen the pictures here?

A. Yes; I have seen the pictures. [211]

Q. And are they, according to your memory of these hatch boards, true representations of those hatch covers?

A. Yes. Well, there is hatch boards down there. Which ones they were I don't know. There is no marking on them to tell what part of the hatch they came from. They belong to the ship and they no doubt belong to that hatch.

Q. You knew they were in that condition, didn't you?

A. In what condition?

Q. As shown in the photographs?

(Testimony of W. H. Cuthbert.)

A. Well, I don't see anything bad about them.

Q. I am not talking about that. You knew that they were as shown in the photographs, didn't you?

A. Oh, yes. In that condition, yes.

Q. You had been on the ship for four years, hadn't you?      A. Yes.

Q. As Chief Mate?      A. Yes.

Q. And were, of course, responsible for these hatch covers?      A. Yes.

Q. Had you ever replaced any of them?

A. Oh, yes; many times.

Q. How recently before this accident had you replaced any of them at this hatch?

A. At this hatch—oh, I don't know. I couldn't say how often we did. I keep spare ones on [212] hand.

Q. Now, you said that the hatch covers on the three after sections were longer by about 8 inches than those on the forward five sections?

A. Yes, they were longer.

Q. Were these hatch covers numbered in any way, as I know they are on some ships, to denominate which sections they are to go into?

A. Some of them were. You try to keep them numbered, but they were off.

Q. In this instance do you know whether they were numbered or worn off?

A. No, there was no numbers on them.

Q. You spoke of the crossbeams being all of equal length and supposedly interchangeable. You

(Testimony of W. H. Cuthbert.)

were referring to the blueprint showing when the ship was built, weren't you?

A. I am referring to my experience on the ship there, knowing that they had been moved around, and also from the blueprint, of course.

Q. If one of the crossbeams got a little bit sprung, as I know they do—— A. Yes.

Q. ——or if the hatch coaming at either side got slightly bent, even by as much as a half an inch or a quarter of an inch, one of the beams might not fit in that location and it might have to be changed; isn't that true? [213]

A. Changed in what way?

Q. Well, taken out and another one put in its place?

A. Well, a beam would have to be changed or none of the rest would fit it, if that was the case. They are all the same size.

Q. They should be, but with the battering around the hatch that a ship gets in so many years, the hatch coaming or the beams don't always remain true, do they?

A. Well, they seldom get out of line. Other parts will get bent before the ends of them. But they do get sprung once in a while. I admit that.

Q. Did you as Chief Mate keep track of the loading at Yaquina Bay and what the longshoremen did?

A. No. We have a cargo boatswain. The second officer, he keeps track of the work along with the supercargo and the loading bosses.

(Testimony of W. H. Cuthbert.)

Q. I understand your supercargo is going to be here as a witness; is that right?

A. I think so.

Q. Do you know yourself whether the Independent Stevedoring Company at Coos Bay covered up this No. 3 lower 'tween-deck hatch?

A. I believe so. They was our stevedoring company.

Q. Do you know whether they were working that hatch?      A. Yes. [214]

Q. You know that?

A. I know they were working that hatch, yes.

Q. They were working cargo in through that hatch?      A. In the lower hold.

Q. Are these hatch beams when they are put in place always uniformly dead level, or sometimes does one stick up a few inches, as happened in this case?

A. Not a few inches, no. There might be a little chip in there or something, but anything that sticks up a few inches is not going to——

Q. You mean a little debris?

A. A little debris, yes.

Q. Did you have any conversation with the walking boss or the gang boss on the Ventura before the accident?

A. No, I don't remember having any. They might have talked to me during the loading of the ship, but I don't recall any single conversation.

Q. Was this the first day's loading of the ship?

(Testimony of W. H. Cuthbert.)

A. I couldn't say. I don't remember whether it was or not.

Q. Did you inspect the covering up of the hatch at Yaquina?

A. Not the covering up. I was down there when they took them off and checked up the hatchboards. It was one of the other officers checked that, or I presume he did. [215]

Q. At Yaquina? A. At Yaquina, yes.

Q. You mean he checked the covering up?

A. I think so, yes.

Q. It is the right of a Mate at any time he sees stevedores doing work on a ship that he doesn't approve of to stop the work, isn't it?

A. That is right, yes.

Q. And no Mate stopped the Portland Stevedoring Company in its work at covering up this hatch before the accident, did they?

A. What do you mean, stopping work before the accident?

Q. I mean when the Portland Stevedoring Company, as indicated by the testimony here, replaced the hatch beams and disposed them, made them all level, and then were putting in the hatch covers and were going to cover the whole thing with lumber, no Mate of the vessel disapproved of that operation, did they?

A. No, I don't think any Mate of the vessel knew about it.

Mr. Wood: No. Maybe not. I think that is all for the present, at least.

Mr. Morrison: I have no further cross. [216]

(Testimony of W. H. Cuthbert.)

### Redirect Examination

By Mr. Roberts:

Mr. Roberts: Your Honor, I would like to see Pretrial Exhibits 41-A, 41-B, 41-C and 41-D. I would like to let the Captain look at these, your Honor.

The Court: Yes.

Mr. Roberts: They are admitted into evidence.

The Court: Yes, they are in.

Q. (By Mr. Roberts): Captain, will you look at those exhibits. Are they fairly representative of the hatch covers in the hold? I am not saying they were the ones that were involved in this accident.

A. What is it you want to know?

Q. Are those fairly representative of the hatch covers that you saw after the accident?

A. Yes, only in a different position.

Q. I see. Would you look at the one that is lying down on the steel pontoon. That board is dished at one particular end or one corner how high, would you say?

A. Well, one corner here looks about one inch—well, it is hard to judge here, to say what it is. It is more than an inch, but not much more than an inch.

Q. Those hatchboard covers are  $1\frac{3}{4}$  inches wide? The width of the hatch covers is  $1\frac{3}{4}$  inches?

A.  $1\frac{3}{4}$ , yes. [217]

Q. Have you ever seen a longshoreman place those covers back on a strongback?



(Testimony of W. H. Cuthbert.)

A. I have never paid much attention, no. I have seen them, yes, but just to see the finishing up, that they were in right, or something like that.

Q. Captain, as I understand your testimony, at no time prior to the accident had anyone brought your attention to this trouble in the No. 3 hold as far as the workmen complaining about the surface on which they were working; is that correct?

A. Nobody had informed me or complained about it previous to the accident.

Q. That hatch, you think, had been worked at Yaquina. Had you had any complaints there?

A. No complaints, no.

Q. You heard the testimony that the after beam on the No. 7 strongback was about 4 inches out; is that right? A. Yes.

Q. That would put it nearly halfway out of its retaining slot, wouldn't it?

A. A little less than half.

Q. A little less than half. Do you know whether, if that proved to be the fact, the hatch covers would still have a support to lay on?

A. You mean on that slot, when it is slanted that way? [218]

Q. Yes.

A. I don't know now whether——

Q. It would be pretty precarious, wouldn't you say?

A. Well, yes. You would consider it would bring it back about 2½ inches, the way I figure, anyway, about 2½ inches, back from the ends or 3 inches.

(Testimony of W. H. Cuthbert.)

Q. Had you seen the longshoremen of the Independent down at the Coast working on your ship before, the Ventura, on your previous trips?

A. You mean working on the ship?

Q. Yes.

A. Independent longshoremen? Yes.

Q. Had you ever seen any of them leave a beam out 4 inches, out of its slot? A. No.

Q. Do you think they would have done it?

A. Well, I don't know. It is rather odd that they would. I can hardly picture them doing it now.

Q. It is just too far out?

A. 4 inches, that is too far out. The main thing is they have to work the hatchboards the same as any other place.

Q. You have seen a beam, though, out of its slot a slight distance, but never as much as four inches?

A. No, no.

Mr. Roberts: That is all. [219]

Mr. Wood: I would like to ask a question about that.

#### Recross-Examination

By Mr. Wood:

Q. Even if the beam was 4 inches high, the hatchboards did fit in their place, didn't they?

A. No, it wouldn't exactly. It couldn't possibly fit in their place if it was that far away from the hatches.

Q. They may not fit as snug, but the hatch was all covered up with them when the ship arrived in Portland, wasn't it?

(Testimony of W. H. Cuthbert.)

A. Yes, they were covered up.

Q. So they were fitting into place; they weren't falling through, were they?

A. All right, but you have got your beam up that high.

Q. 4 inches.

A. Your hatches come down like that. All right, you have got your flange on each side. Well, then your hatches slant down. They are going to come down on this side.

Q. But they will still stay there because the lips on the crossbeam and the coaming are still wide enough to catch the ends of the hatchboards?

A. Yes, they have got an inch or so.

Q. I wanted to ask you one final question: You have been on that ship four years up and down the Coast here, haven't you? [220]

A. Yes.

Q. Hadn't you had from longshoremen and stevedoring companies previous complaints about these hatch covers?

A. About metal hatch covers, yes.

Q. Many of them?

A. Yes. No matter what condition they were in, why, they complained about them.

Q. Didn't they complain about them particularly on the Ventura because they were dished and bent?

A. No.

Q. They didn't like them?

A. No, they weren't complaining about that.

Q. What were they complaining about?

(Testimony of W. H. Cuthbert.)

A. Just didn't want metal hatchboards.

Q. Why not?

A. Well, they didn't figure they were safe for some reason or other.

Q. That is it.

A. They had that idea. I don't know. If they were good enough for the Navy they were good enough for the Merchant Marine.

Q. How long had these complaints of longshoremen and stevedoring companies against their safety been going on?

A. Oh, I don't know how long. It is on occasions. It is not continuously. Every now and then someone makes a complaint. [221] Now the two places is Los Angeles and in Portland occasionally; not always in Portland but occasionally. They are usually in Los Angeles. Those are the only two places we get complaints that I know of.

Q. This is a fair statement, isn't it: That there have been more or less continual complaints about those hatch covers?      A. Not continuous, no.

Q. I don't mean every week, but I mean every so often throughout the course of the four years you were on her somebody was kicking about those hatch covers, weren't they?

A. Yes, they kick about wooden ones, too.

Q. I know, but weren't they more objecting to these metal ones because they didn't consider them safe?

A. Well, what they considered them I don't

(Testimony of W. H. Cuthbert.)

know, but they did complain, I admit that, in those two places.

Q. There were more complaints about these metal ones than there ever were about wooden ones, weren't there?

A. Well, yes, there was. They don't break as easy as the wooden ones.

Q. But they bend easier?

A. They bend easier, yes. They bend, but they don't break up as easy.

Mr. Wood: That is all.

Q. (By Mr. Morrison): These complaints about the metal ones, whether they were justified or not in making such complaints, [222] their complaints were that they didn't consider them safe, weren't they?

A. That is what they stated, yes.

### Redirect Examination

By Mr. Roberts:

Q. One more question: So that the Court may understand, they were not complaining necessarily about the condition of the hatch covers; they were complaining because they were metal; is that right?

A. Yes, that was the main complaint, because they were metal.

Q. Secondly, Captain, one of the reasons that the longshoremen couldn't or didn't like them was because they couldn't use them for shoring?

Mr. Morrison: Just a moment. That is so very leading that I have to object.

(Testimony of W. H. Cuthbert.)

The Court: You are a fairly good leader yourself. Ask the question.

Q. (By Mr. Roberts): They couldn't hammer nails into them for shoring, could they?

A. No, you can't. The metal ones, they can't hammer any nails in them for shoring.

Q. They can't utilize them in the hold for shoring or things of that nature? [223]

A. For shoring up and things like that, no.

Q. These ships were constructed during the war. Do you know why they had the metal hatch covers?

A. Well, yes. It is the fire hazard.

Q. And they wanted to keep less weight off the vessel?

A. Yes.

Q. And cut down the fire hazard?

A. Yes.

Mr. Roberts: That is all, Captain.

(Witness excused.)

Mr. Roberts: Your Honor, I will call Mr. Berg now. [224]

### CLEMENT BERG

was produced as a witness in behalf of the Defendants and Third Party Plaintiff's and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Roberts:

Q. Will you state your full name, please?

A. Clement Berg.

Q. How old are you, Mr. Berg?

A. 56.



(Testimony of Clement Berg.)

Q. Where do you live?

A. 1023 Northeast 60th Avenue.

Q. How long have you lived in Portland?

A. Oh, about 30 years, or 35.

Q. What is your present occupation, sir?

A. I am stevedore foreman for Jones & Company right now.

Q. W. J. Jones & Company? A. Right.

Q. What is your official title on the water front?

A. Well, foreman or walking boss.

Q. Is a walking boss a member of the longshore union, or does he work for the stevedoring company?

A. For the stevedoring company.

Q. What does a walking boss do?

A. Well, supervises the work more or less.

Q. Do you supervise it from the dock or on the ship? [225] A. The ship and dock sometimes.

Q. Do you mix with the men? A. Yes.

Q. Are you down in the holds with them?

A. Yes, sir.

Q. Whom do you give your orders to?

A. Usually the gang boss. We have a gang boss for each hatch ordinarily.

Q. Do you have a gang steward, Mr. Berg?

A. Some companies. Not all of them.

Q. How many men usually comprise a gang?

A. Oh, that depends. Loading, 13 or 14, and discharging, 11 or 12.

Q. On the 9th of February, 1955, by whom were you employed?

A. By Portland Stevedoring Company.

(Testimony of Clement Berg.)

Q. On that day were you working on the vessel?

A. I was, yes.

Q. What vessel? A. Ventura.

Q. What kind of a vessel is that?

A. A C-2 as far as I am concerned.

Q. Do you know who the owner and operator is?

A. Matson and Oceanic.

Q. Where was the vessel berthed?

A. Terminal 4, Pier 2. [226]

Q. Do you remember what time you started work on that day, Mr. Berg?

A. Well, I am not quite positive about it. It was around 8:00 o'clock, anyhow.

Q. 8 o'clock in the morning? A. Yes.

Q. Do you know Mr. Swanson over here who is the plaintiff in this case? A. Yes, sir, I do.

Q. Was he on that crew working that day?

A. Yes, sir.

Q. Now, Mr. Berg, can you tell us your first indication of any trouble or any controversy that was going on in Hold No. 3?

A. Yes, I can. It was called to my attention after we got our uncovering done in the lower 'tween-deck, where we were supposed to work. We were supposed to work in the lower 'tween-deck.

Q. Before you go any further, you uncovered from the main deck down? A. Right.

Q. So you uncovered two decks; is that right?

A. That is correct.

Q. What kind of covers do you have on the main deck? A. The main deck, pontoons. [227]

(Testimony of Clement Berg.)

Q. What is a pontoon?

A. Well, it is about 5 feet wide, possibly  $4\frac{1}{2}$  or 5 feet wide, and the width of the hatch, which is 20 feet ordinarily, or 21 maybe.

Q. What were these made of? Steel?

A. Steel.

Q. Then the next level below?

A. The next level below I am not so sure if we had wooden hatches or steel hatches.

Q. Let's get down to the lower 'tween-deck. How was that covered?

A. That was covered with steel hatches.

Q. Steel hatches supported upon what?

A. Supported by beams or strongbacks.

Q. What kind of strongbacks were they, do you know?

A. That is kind of hard to describe. Ordinary strongbacks, the usual strongbacks that we use, or beams, whatever you call them.

Q. Did they have a hatch dividing bar in between them?

A. Oh, yes. Short hatches all have them.

Q. Mr. Berg, you were not here yesterday when the gang testified, were you? A. No.

Q. Were you at No. 3 at the time all the covers were being taken off; that is, from the main deck down? [228]

A. Well, no, I couldn't say I was. We had five gangs. I go from one hatch to the other.

Q. Can you tell us when you first went to Hatch No. 3?

(Testimony of Clement Berg.)

A. I first went down there with Lundstrom, who was the gang boss. He came to me and says it was unsafe to walk on the hatch covers down in the lower 'tween-deck and we had to do something about it or they were not going to turn to.

Q. What do you mean, they were not going to turn to?

A. They were not going to go to work.

Q. Did he come out of the hold and tell you that?

A. Yes, I am pretty sure I went down in the hold—I am pretty sure he came up on deck and told me about it.

Q. What did he say again?

A. That they were unsafe to walk on; they were too dished and too warped and they were wobbling all over.

Q. That was the hatch covers? A. Right.

Q. Then what did you do with Mr. Lundstrom after he came up on deck?

A. I went down in the hold and I took a look at the situation, which was very bad, I admit.

Q. Who was there when you took a look?

A. Well, the whole gang was there.

Q. Was Mr. Lundstrom there? [229]

A. Yes, he was down there.

Q. Will you tell the Court what you found or what you saw?

A. We found the after beam, which was No. 7, was out of the socket, oh, between 3 and 4 inches, I would say, which made it very bad. And we were

(Testimony of Clement Berg.)

going to work in the 'tween-decks there, and we couldn't work on a surface like that at all.

Q. Were you going to utilize the surface of the hatch opening? A. Yes, sir.

Q. What were you going to load into the 'tween-deck? A. Lumber.

Q. How were the individual hatch covers on that particular opening?

A. Well, naturally they were all a little——

Q. How were they at the place where the beam was up? I mean the other hatch covers.

A. Well, the other hatch covers were okeh, but there were a lot of them—you couldn't walk on them the way you would want to. They were in very bad shape, the majority of them. I wouldn't say they were all bad, but the majority of them.

Q. What did they do—teeter-totter?

A. Yes, they did.

Mr. Roberts: Mr. Bailiff, would you get [230] those photographs.

Q. Mr. Berg, I understand some of these were taken after the accident? A. Yes.

Q. I am handing you at this time Pretrial Exhibit 41-C. Does that fairly represent the steel hatch covers? A. Yes.

Q. How about 41-A?

A. That is about what they looked like.

Q. And 41-B? I think that is the one standing up on its side.

A. It must be. Yes, that is the bottom side of it. I guess.



(Testimony of Clement Berg.)

Q. They are fairly representative, though, are they?      A. Yes, that is it.

Q. So, as I understand your testimony so far, the men were not going to work; is that right?

A. Yes.

Q. What happened then?

A. Well, I spoke to——

Q. Down in the hold what did you do?

A. Well, I told them we will do one or the other; you can suit yourself. And I walked out of the hold. I told them, "Suit yourself. If you want to change the beam, okeh. Or we will get some lumber and floor it off solid," floor it off solid with lumber on top of the hatch so it would be [231] safe to walk on.

Q. You left it in the alternative?

A. Yes. I told them to suit yourself, so they decided they were going to change——

Q. I want to know exactly what you told Mr. Lundstrom and the crew?

A. We looked the beams over, and we found—to my recollection, the No. 1 beam was in the No. 7 slot. It was marked. There was a pencil or paint mark on the beam. And we went down below to look, and we took some hatches off, and we also went down below and saw that the beams were marked and that they were in the wrong spot. You see, we could tell from the top where it goes into the slot. That No. 1 beam was quite a bit shorter than the No. 7 beam, because it fitted right down in. There was,



(Testimony of Clement Berg.)

oh, probably an eighth of an inch still to spare. So we changed it and put it in aft.

Q. Did they change the two crossbeams when you were there?

A. No. I went up to get the lumber. We were still going to have lumber on after that, after we changed the beams, because the hatches wasn't safe to walk on anyway.

Q. You didn't know whether they were going to change the beams, did you?

A. We talked about it. When I got down there, I told them, "Suit yourself. I will go up and see what kind of lumber I [232] can get to cover the hatches."

Q. You said as far as changing the beams they could suit themselves; is that right?      A. Yes.

Q. Do you know, in fact, whether the beams were ever changed or not?

A. They were changed.

Q. How do you know?

A. Because when I came back a short while after, they was still covering up. That is, they had the forward end all covered, already covered, and they were changing hatches in the after end.

Q. Could you tell whether the after beam was higher or lower then when you got back?

A. It was down in the socket.

Q. It was down in the socket. How do you know it was changed, though?

A. Well, because they told me they changed it. I wasn't there when they changed it.

(Testimony of Clement Berg.)

Q. They told you that? A. Yes.

Q. You left the hold; is that right?

A. Yes.

Q. And you climbed up on the main deck?

A. Yes. [233]

Q. To go and get some lumber? A. Right.

Q. Then what happened?

A. Well, in the meantime I understand—no, I came by the hatch after they changed it. First, when I went up to No. 2 or No. 1—I have forgotten which—I had to come back, and as I came back I noticed them covering the forward end. So I knew then they had changed the beam. And I went back. But in the meantime, anyway, I got hold of the supercargo to get the lumber down there to cover the hatch with, and we decided to get some rough 2 by 8's or 2 by 12's, whatever it was, some rough lumber.

Q. He told you where to get it; is that it?

A. Right.

Q. Then did you bring it back to the hatch, the lumber?

A. Well, the lumber was brought after the accident happened first.

Q. You didn't actually see the accident?

A. No.

Q. Mr. Berg, could you have just covered the faulty hatch covers with the lumber without changing the beams?

A. Well, it could have been done, yes, but it wouldn't have been too good to work on.

(Testimony of Clement Berg.)

Q. You would have to build it up on the end; is that right?

A. That is right, across the after end. [234]

Q. You could have done it that way?

A. It could have been done, but it wouldn't have been very——

Q. Did you call the ship's officers——

Mr. Wood: He didn't finish. He said it wouldn't be very——

A. I said it wouldn't be very practical. It would be very unpractical to work on a surface like that.

Q. (By Mr. Roberts): Mr. Berg, did you call the ship's officers or anybody regarding the condition of the hatch covers?

A. I am pretty sure I did. I talked to one of the Mates, whether it was the First, Second or Third. He was standing up over the hatch, I am pretty sure. Well, there was quite a delay there. Everybody was standing around doing nothing, so naturally I usually go to the supercargo first.

Q. Was it your intention to get the men working as soon as possible?           A. Right.

Q. And you thought the quickest way to do it was to cover the opening; is that correct?

A. Correct.

Q. You didn't actually see the accident?

A. No, sir; I didn't.

Mr. Roberts: I think that is all. [235]

(Testimony of Clement Berg.)

Cross-Examination

By Mr. Morrison:

Q. So it was your plan, then, after they changed the beam to put lumber over these hatch covers to make them safe? A. Correct.

Q. And these hatch covers were badly bent and dished, weren't they?

A. Yes, they were very bad.

Q. In other words, they came up, a lot of them, like a saucer, and if you stepped on one end it would slip right out from under you? A. Yes.

Q. Approximately what percentage of those hatch covers were in that damaged condition?

A. Oh, I would say approximately half of them was in bad condition myself.

Q. Half of them you would say were in bad condition? A. Yes.

Q. Then your idea was to put lumber over them and then they could walk over the lumber in doing the work? A. Correct.

Mr. Morrison: That is all.

By Mr. Wood:

Q. I want to ask you a few questions, Mr. Berg. When the [236] men refused to work there, wouldn't turn to, because of the dangerous condition of the hatch, was it on account of the bad condition of the hatchboards or the raised beam that they were afraid of? A. It was both.

Q. Both of them? A. Yes.

Q. When you found that they didn't want to

(Testimony of Clement Berg.)

work under those conditions, you had a talk with the gang boss, Mr. Lundstrom, did you?

A. Yes, sir.

Q. And you told him to floor up, cover the hatch up with lumber? A. Right.

Q. You would go and get the lumber?

A. Yes.

Q. And you left it up to him to decide whether to change the beams or not? A. Correct.

Q. Now, they could have floored up with lumber without changing the beams, as I understand it, but you thought it was better to change the beams first?

A. Right.

Q. Is that correct? A. Correct. [237]

Q. When this difficulty arose at the hatch you talked to one of the men about it, didn't you?

A. I know I did, but which one I couldn't say.

Q. No. Did you discuss with him the bad condition of the hatches? A. Yes, I did.

Q. What did he say? Did he say they had complaints about them before? A. Right, yes.

Q. And did you discuss with him about the beams?

A. No. The beam wasn't discussed, I don't believe.

Q. It was more the condition of the hatches?

A. Right.

Q. Did he say that they had a lot of complaints about those hatches?

A. Yes. They have them all up and down the Coast, is the word he told me at that time.

(Testimony of Clement Berg.)

Q. Then when you did floor off the hatch after the accident with lumber, then it was safe to work on?      A. Right.

Q. But before that it was not safe to work on?

A. No.

Mr. Wood: That is all. [238]

Redirect Examination

By Mr. Roberts:

Q. One question, Mr. Berg. If this condition was unsafe, as you have testified, wasn't it your obligation to stop the work?      A. It was stopped.

Q. To allow the ship's personnel and officers to remedy the situation?

A. That is what we were working on, to make it safe to floor off and get her safe to work.

Q. And you did that yourself and not the ship's officers?

A. No, not the ship's officers. Between the super-cargo and I it was fixed up that way.

Q. It was done at your instigation, wasn't it?

A. Yes, sir. And the gang boss, he agreed if the floor was covered with lumber the men would go to work. We held kind of a little caucus down there. That is the only way they would agree to work.

Q. You were interested in getting them to work, weren't you?

A. In getting the men started and getting to work; right.

Mr. Roberts: That is all. Thank you.

(Witness excused.) [239]



EARL A. OLSEN

was produced as a witness in behalf of the Defendants and Third Party Plaintiffs and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Roberts:

Mr. Roberts: Your Honor, I would like through this witness to put in Exhibits 45-A and 45-B, and also 46-A and 46-B. They are the contracts with the stevedoring company.

Mr. Wood: They are already in evidence, aren't they?

The Court: Yes, they are received.

Q. (By Mr. Roberts): Would you state your full name, please.           A. Earl A. Olsen.

Q. Mr. Olsen, how old are you, sir?

A. 68.

Q. Where do you live?

A. At the present time Sutter Creek, California.

Q. Are you working?

A. No, I am retired.

Q. What were you doing on the 9th of February, 1955?

A. I was supercargo for Matson Navigation Company on the Steamer Ventura.

Q. When had you first gone on that vessel on that trip? [240]

A. I met the vessel at Yaquina Bay.

Q. What does the supercargo do, sir?

A. Supervises the loading of cargo and decides

(Testimony of Earl A. Olsen.)

the number of gangs to work and instructs the walking boss where to place the gangs and what cargo to load in which space in the ship.

Q. Did you join the vessel at Yaquina Bay; is that correct? A. That is correct.

Q. Who was the stevedoring contractor down there?

A. Independent Stevedoring Company.

Q. Was No. 3 hold worked? A. Yes.

Q. Did you see any uncovering in that hold?

A. Oh, yes. The ship arrived there from sea and all hatches were covered.

Q. All hatches were covered, including the lower 'tween deck?

A. And the only cargo worked at Yaquina Bay in No. 3 was in the lower hold, so they had to uncover all hatches.

Q. They had to uncover the lower 'tween deck?

A. Yes.

Q. In order to put cargo in the lower hold?

A. That is right.

Q. Who did the uncovering of the lower 'tween deck?

A. The longshoremen, the longshore gang. [241]

Q. Independent Stevedoring?

A. That is right.

Q. When the vessel had completed its loading at Yaquina Bay you covered up?

A. That is right.

Q. Who covered up?

(Testimony of Earl A. Olsen.)

A. The same gang, Independent Stevedoring Company.

Q. So they replaced the beams and hatch covers in No. 3 'tween deck; is that right?

A. That is right.

Q. You know that of your own personal knowledge, Mr. Olsen?

A. Oh, yes.

Q. Where did the vessel go after that?

A. She sailed from there to Portland, Terminal No. 4, Pier 2.

Q. Do you know about this accident to Mr. Swanson on the 9th of February, 1955, on the Ventura?

A. Yes. I didn't see it.

Q. You know about it. Now what time did the vessel, to the best of your recollection, arrive on the night of the accident?

A. Oh, I was down on the dock on or before 7:00 a.m. that morning.

Q. Did you see them uncover No. 3?

A. Well, not—partly, but not completely. I was all over the ship on the vessel at the time, yes. [242]

Q. What?

A. I was on the vessel at the time.

Q. Were you at one place or all over?

A. No, I was all over the ship.

Q. What was your first knowledge and when was that knowledge of any trouble in No. 3?

A. Well, I knew it before the accident. I was informed by Mr. Berg, the walking boss.

Q. Where were you at the time?

A. I don't recall whether I was up forward or

(Testimony of Earl A. Olsen.)

whether I came from aft, but I was on deck, and I came to No. 3 and he informed me that there was complaints about the condition of the hatch covers.

Q. Did you look down into No. 3?

A. I looked down from the deck, yes.

Q. Did you see the lower 'tween deck covering?

A. Yes.

Q. Did you see any beam that was 4 inches out of its slot?

A. Well, it is not too noticeable on deck looking down. It wouldn't look too bad from on deck.

Q. Did you notice the condition of the hatchboards at that time?

A. Yes, some of them were dished.

Q. Some of them were dished?

A. Oh, yes. [243]

Q. Did you see Mr. Berg down there?

A. Yes, he was down in the hatch. Then he came up on deck when I came alongside.

Q. I see.

A. And that is when we talked about getting some lumber to cover the hatches.

Q. Did you tell him where to get the lumber?

A. I told him where he could get the lumber, yes.

Q. Did you know anything about switching the beams?

A. Well, I didn't know at that time whether they were going to or not, but it so happened that they did afterwards, I understand.

Q. At the time you talked to Mr. Berg you

(Testimony of Earl A. Olsen.)

didn't know?           A. No, not for certain.

Q. What happened thereafter, Mr. Olsen?

A. Well, when Mr. Berg went ashore to arrange for the lumber I went aft then to get the No. 4 and 5 gangs started on the cargo. I was aft when the accident happened.

Q. What?

A. I was in the after part of the ship when the accident happened.

Q. What time had elapsed from the time you left No. 3 until the accident happened?

A. Oh, it may have been 15 or 20 minutes, something like that, maybe a little longer. [244]

Q. Did you go back to No. 3?           A. Oh, yes.

Q. What did you see or find?

A. Well, you mean after the accident happened?

Q. Yes.

A. Well, the hatch was covered except the after section, I believe. Just some boards in the after section.

Q. Where was Mr. Swanson?

A. He was down below.

Q. What?

A. He was down in the lower hold.

Q. You could see him down in the lower hold?

A. Well, I couldn't see him from the deck, but I know he was.

Q. Did you see any hatch covers in the lower hold?           A. No.

Q. You didn't see any?

(Testimony of Earl A. Olsen.)

A. There may have been one there, but I didn't see it.

Q. Mr. Olsen, how long have you been on the water front?      A. Since November, 1921.

Q. Have you worked on these vessels with steel hatch covers before?      A. Oh, yes.

Q. Based on your observation of the steel covers that you saw on the No. 3 'tween deck, do you think if you stepped [245] on one end it would dish up over the flange?

A. No, my observation is that they were not dished endways. They were just dished sideways mostly.

Q. Sideways?

A. They may have had a tendency to slide sideways, but not endways over the strongback.

Mr. Roberts: I think that is all, sir.

#### Cross-Examination

By Mr. Morrison:

Q. Did I understand you to say they were just dished on the side?

A. Well, more so than endways, is what I have in my recollection.

Q. Now take a look at these two pictures of the ones that were down in the hold. Aren't those dished in the middle?

A. They are dished both ways there.

Q. They are dished both ways, aren't they, those two that you found in the hold?      A. Yes.



(Testimony of Earl A. Olsen.)

Q. Referring now to the defendants' exhibit, doesn't that show it is dished on the end?

A. Well, that is a wooden hatchboard there.

Q. That is wooden. But the two that I have shown you which are plaintiff's exhibits show them dished both ways, [246] on the side and front; is that correct?

A. That is right.

Mr. Morrison: Thank you.

Redirect Examination

By Mr. Roberts:

Q. Mr. Olsen, the length of the hatchboards there at the middle is the same, isn't it?

A. Well, it wouldn't shorten them very much in that amount of dish, no. The corners were where most of the dish is.

Mr. Roberts: Thank you. That is all.

(Witness excused.)

Mr. Roberts: That is all of our case on liability. We have the delay for the medical, your Honor, at your convenience.

The Court: What is your plan?

Mr. Morrison: I think the doctors are due back the 11th, if the Court please.

The Court: What day is that?

Mr. Morrison: That would be Monday.

The Court: We better set a time then.

(Discussion off the record.)

(Whereupon, an adjournment was taken until Tuesday, February 12, 1957, at 12:00 [247] noon.)

Portland, Oregon, February 12, 1957

(Court reconvened, pursuant to adjournment, at 12:00 noon, and proceedings herein were resumed as follows:)

Mr. Morrison: If the Court please, Mr. Wood is not here. He indicated the other day he was not calling any medical testimony. I don't know whether he planned to be here or not.

The Court: We will go ahead.

#### HOWARD L. CHERRY

was produced as a witness in behalf of the plaintiff and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Morrison:

Mr. Morrison: If the Court please, before going into the examination of this witness, there is a stipulation that we wanted to put in the record, and that is that under the union rules of this long-shoremen's union the voluntary retirement is at the age of 65 and compulsory retirement at the age of 68, and that if they stay until 65 there is \$100 a month pension. [248]

Mr. Roberts: I will so stipulate.

The Court: As I understand, he is 53 now?

(Testimony of Howard L. Cherry.)

Mr. Morrison: 55 now. He was 53 at the time of the accident.

The Court: The point of your stipulation is that he is defeated of his pension rights?

Mr. Morrison: That is one, and the fact that he could stay on until he was 68.

Mr. Roberts: Your Honor, I don't know that I can stipulate on that phase, that it defeats his pension rights.

Mr. Morrison: Yes, it does. He has to stay until he is 65. You might check on that. Let's reserve that, and the counsel can check on it.

The Court: Withdraw the stipulation.

Mr. Roberts: Yes, your Honor.

Q. (By Mr. Morrison): State your name, please. A. Howard L. Cherry.

Q. Are you a regularly licensed physician and surgeon, Doctor? A. Yes.

Q. Of what schools are you a graduate?

A. Oregon State College, 1938; University of Oregon Medical School in 1943.

Q. Do you specialize?

A. Yes, in orthopedic surgery. [249]

Q. What training did you take to specialize in that?

A. An internship at the University of Iowa Hospital; two years in the Army, half of which was orthopedics; three years of residency at the Veterans Hospital in Portland, and the Shrine Hospital in Spokane.

Q. You are with Blair & Thatcher?

(Testimony of Howard L. Cherry.)

A. Blair, Thatcher & Davis.

Q. How long have you been with them?

A. Since 1949.

Q. What hospitals are you identified with?

A. St. Vincent's Hospital, Providence Hospital and the University of Oregon Medical School Hospitals.

Q. What medical societies are you a member of?

A. I belong to the County and State Medical Societies and to the American Academy of Orthopedic Surgery, the Western Academy of Orthopedic Surgery and the Northwest Orthopedic Society.

Q. Doctor, when did you first see Mr. Swanson?

A. Mr. Swanson was sent to our care at St. Vincent's Hospital following an injury, and at that time it was mainly a skull injury and we immediately turned him over to Dr. Kloos, who is a neurosurgeon.

Q. Your office does work for the longshoremen, do you not?      A. Yes, that is right.

Q. And in case of an injury they are referred to you and you [250] either treat them or send them to some other specialist in a particular field?

A. That is correct.

Q. And in this case you referred him to Dr. Kloos; is that correct?      A. That is right.

Q. Then how frequently did you see him after that, Doctor?

A. I turned him over completely to Dr. Kloos and I didn't see him again until May 27th, 1955.

Q. What were his complaints then?

(Testimony of Howard L. Cherry.)

A. Dr. Kloos had treated him and operated on him, as you know, and he came to our office at that time from Dr. Kloos complaining of pain in his back and legs. He complained that there wasn't much life in his legs, which is a quote, but besides the pain he complained that he couldn't handle his legs well. We examined him and he was sore in particular at the lumbosacral area. He had some X-ray changes in the form of congenital changes in his low back and some osteoarthritis. He had considerable spasm and tenderness in his low back. At that time I treated him by furnishing him with a canvas belt with a pad and had him get some physical therapy.

Q. You sent him for physical therapy?

A. Yes.

Q. Then when did you next see him, [251] Doctor?

A. I next saw him on June 10th of 1955, approximately two weeks later.

Q. What were his complaints then?

A. They were much the same. He was then wearing the belt which he thought helped him, and he was getting the physical therapy, and I suggested he get two more weeks of physical therapy.

Q. That was before he was operated on the second time, was it not, Doctor?

A. I don't know when he was operated the second time.

Q. I believe December, 1955?

(Testimony of Howard L. Cherry.)

A. It would be before that. This was June 10th, 1955.

Q. When did you last see him?

A. The only other time that I saw him was February 11th, 1957—yesterday.

Q. You saw him yesterday? A. Yes.

Q. Did you examine him yesterday, Doctor?

A. I examined him in regard to his back, yes.

Q. You limited your examination to the back and not to any head injury?

A. That is right.

Q. Now what were his complaints yesterday on the back, Doctor?

A. He complained that his back hurt him all the time, and [252] it was essentially his entire back, the dorsal spine and the lumbosacral area. He complained he was cold at the time, and it was quite warm in our office. He came wrapped up, but he was still cold. He complained of loss of strength, a general loss of strength, and inco-ordination. He walked rather deliberately and slowly, and talked—I would describe it more childishly.

Q. I didn't hear that?

A. He talked rather childishly. His responses were rather simple. On examination he was extremely tender over his entire spine from the base of his neck to and including his coccyx. On very slight pressure he would almost fall over from apparent pain. His straight-leg-raising tests was about 60 degrees bilateral, normal being close to 90 degrees. His knee jerks, knee kick and ankle jerks,



(Testimony of Howard L. Cherry.)

were active and equal. From normal activity the sensation in his legs was not particularly changed. He was extremely tender around the area of the coccyx, and complained of episodes of marked spasm in the very lowest part of his back. And he had one of these spasms while he was in the office, which appeared to cause him considerable discomfort at the time.

Q. Where did this spasm affect him that he had while he was in your office?

A. It was in the region of the coccyx. [253]

Q. Was that in your opinion real?

A. Yes, I think it was.

Q. It was not feigned? A. No.

Q. That was yesterday? A. Yes.

Q. You may continue, Doctor.

A. I am through.

Q. Doctor, what was your conclusion from your examination yesterday as to his back condition?

A. My conclusion is that he undoubtedly has trouble with his back, but that he tremendously overacts to it because of central nervous system disturbance.

Q. Central nervous system disturbance?

A. Yes.

Q. You feel that that is real, do you not, Doctor?

A. Yes.

Q. What is your opinion regarding the permanency of that, or would you have to base that some on the findings of the neurosurgeon?

(Testimony of Howard L. Cherry.)

A. I think that a neurosurgeon could give you that better than I could.

Mr. Morrison: You may examine. [254]

Cross-Examination

By Mr. Roberts:

Q. Dr. Cherry, had there been any substantial changes or differences between your examination of Mr. Swanson the first time you saw him and the present time? A. Yes.

Q. What would they be, Doctor?

A. He was much more sore and much more reactive at the present time, and he impressed me, just talking to him, as not being as good mentally as he was on the first occasion.

Q. From an orthopedic viewpoint, though, isn't it true, Doctor, that you don't feel that he has sustained any great orthopedic injury?

A. It is my opinion that he has had a low back strain.

Q. A low back strain?

A. Yes, but that he does react more severely to it than the ordinary person with the same amount of injury would react.

Q. There were no broken bones, were there, Doctor? A. No, no broken bones.

Q. Any evidence of any disk trouble?

A. No, I couldn't make a diagnosis of disk trouble.

Q. You think that he overreacts to the back complaint; is that correct, Doctor?

(Testimony of Howard L. Cherry.)

A. I think that he has a greater reaction to it than an [255] ordinary person would for the amount of injury he had to his back.

Q. Doctor, did you take any tests, Hoffman tests, or anything like that?

A. No. Those are neurological tests. They are not related to back injury, and I am not as competent to interpret them as other examiners that he had.

Q. The Babinski test, or anything like that?

A. I didn't do a Babinski test.

Q. What objective findings did you have, Doctor, as a result of your examination of yesterday?

A. I had the reaction to the pressure that I placed on him, and I had the observation of spasm in his back when he goes into this severe spasm. I have the X-ray examination that shows osteoarthritis and a congenital deformity. That is essentially it.

Q. Was the spasm a temporary thing, the muscle spasm?

A. Yes.

Q. Do you usually find that as an objective finding when a person has an orthopedic injury of some sort?

A. You may. I would say more commonly you would have less spasm and have it more permanent, but you can have it that way.

Q. Doctor, in the course of your treatment I believe you testified that you only saw him twice, May 27th of 1955, and [256] June 10th of 1955, and then

(Testimony of Howard L. Cherry.)

yesterday. You have only prescribed physical therapy and also the back belt; is that right?

A. Did you say that I only prescribed those?

Q. Yes.

A. Yes. He came to my office on one other occasion, June 24th, 1955, but didn't wait to be seen. Sometimes there is such a thing as having a fairly long wait in our office, and that may be the instance. But he didn't come back to us after that because of his back.

Q. Did Mr. Swanson at any time request further treatment, therapy treatment?

A. I don't recall that he did.

Q. Do you know where he was getting the therapy treatment?      A. I don't remember.

Q. I think he testified it was the Providence Hospital, Doctor?      A. It may well have been.

Q. Pardon?      A. It may well have been.

Mr. Roberts: I think that is all, Doctor.

### Redirect Examination

By Mr. Morrison:

Q. One other thing, Doctor: There is some medical testimony [257] by Dr. Kloos that after the second operation he became belligerent and took on a lot of delusions of persecution and things. Now is that consistent with your finding yesterday that he appeared different to you yesterday, mentally, than he was when you were examining him in 1955?

A. I believe it is.

Mr. Morrison: That is all.

Mr. Roberts: No further questions.

(Witness excused.)

Mr. Roberts: Your Honor, I have just two medical witnesses. I asked the first to come at 12:30 and Dr. Marxer right after that.

The Court: Who is your first one?

Mr. Roberts: Dr. Edward Davis.

(Short recess.) [258]

### EDWARD W. DAVIS

was produced as a witness in behalf of the Defendants and Third Party Plaintiffs, and having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Roberts:

Q. Would you state your full name, Doctor, so the Court can hear you?

A. Edward W. Davis.

Q. What is your profession, sir?

A. Physician and surgeon.

Q. Doctor, where were you graduated?

A. University of California.

Q. What post-graduate work did you do?

A. I graduated in 1938 and took post-graduate work at the University of California Hospital until 1941, and then went to the University of Illinois, in Chicago, where I took two more years, and then went into the service.

Q. What service did you go into?

(Testimony of Edward W. Davis.)

A. In the Navy. Following that in 1946 I returned to the University of California on the staff, and remained on the staff in the Department of Neurological Surgery until 1948, when I came up here.

Q. What societies do you belong to, Doctor?

A. In my specialty or just general [259] medical?

Q. The general medical and then the specialty.

A. The American Medical, Multnomah County and the Oregon State Medical Societies, and then in the specialty of neurosurgery I am in the Harvey Cushing Society, the Academy of Neurological Surgery, the Western Neurological Society, the Oregon Neuropsychiatric and the San Francisco Neurological. I think that is all.

Q. Are you on the staff of any of the hospitals, Doctor?      A. Yes, sir.

Q. Which hospitals?

A. Providence, St. Vincent's, Holladay Park, Portland Sanitarium, Physicians and Surgeons and consultant in neurosurgery at the Veterans' Hospital in Portland and in Vancouver, Washington.

Q. Doctor, are you on the staff of the Medical School up on the hill?      A. Yes, sir.

Q. In what department?

A. Department of Surgery.

Q. Are you an instructor up there?

A. Yes, sir.

Q. Of surgery or neurosurgery?



(Testimony of Edward W. Davis.)

A. It is in the Department of Surgery, but actually it is the neurosurgery division of it.

Q. The Division of Neurosurgery? [260]

A. Division of Neurosurgery.

Q. Do you practice with anyone, Doctor?

A. Yes, sir; with Dr. Kenneth Livingstone.

Q. Dr. Kenneth Livingstone? A. Yes, sir.

Q. As I understand it, you have been in practice in Portland since 1946; is that right?

A. 1948, sir.

Q. Do you confine your practice and do you specialize in any particular field of medicine?

A. Yes, sir. Our practice is confined to neurological surgery.

Q. Now, Dr. Davis, did you see Mr. Swanson at my request and, if so, when?

A. I did. I have seen him on two occasions. The first was on September 7th, 1955, and the second was on January 7th, 1957.

Q. Doctor, you may use your notes to refresh your recollection. In regard to the first visit did you make an examination of him and, if so, what were your findings?

A. I did. He was seen in my office on September 7th, 1955. He gave me a history that he had been injured on February 9th, 1955, when he fell through a hatch. He didn't remember exactly what had happened. He was treated at St. Vincent's Hospital by Dr. Kloos and was discharged on March 20th, 1955. [261] At the time of his discharge he stated that he was able to get about enough to go to the

(Testimony of Edward W. Davis.)

bathroom, but he still didn't remember very much of what happened during this hospitalization. Following this hospitalization he apparently was readmitted to the hospital and—no, excuse me. I am mistaken there. Apparently shortly after his admission to the hospital burr holes were put in on the suspicion that he might have a subdural hematoma, or collection of blood——

Q. Excuse me, Doctor, when you saw him September 7th, 1955, what complaints did he have at that time?

A. He stated that he still had a band-like sensation around his head, but this was not bothering him particularly. He stated that he had some headaches immediately following the accident and when he was first at home, but those had subsided, and he had no complaints other than this concerning his head. He felt that his memory had returned to normal, and he complained of no dizziness. He had had no visual disturbances. He also stated that after he was home and up and about he had a good deal of pain across his low back. He was fitted with a brace which rubbed his skin off so that it was uncomfortable and he was unable to wear the brace. He complained of some pain extending from the back down into both legs and of a generalized loss of strength not only in the legs but also in the arms.

Q. Doctor, what were the results of your neurological [262] examination of Mr. Swanson at that time?

A. Except for the burr hole effects, which were

(Testimony of Edward W. Davis.)

palpable in the skull where the openings had been made, the neurological examination was negative. In other words, in testing the cranial nerves they were all normal. Sensation over his extremities and trunk was normal. In testing the motor power he seemed to show a generalized weakness. It was my impression at that time that this was perhaps an involuntary inhibition. I wasn't sure in testing his reactions because of his complaint of pain whether perhaps the pain may be causing him not to exert full strength, but at any rate there was no difference between the two sides and the reflexes were perfectly normal at that time. I found no other difficulties as far as the neurological examination was concerned.

Q. Doctor, you said you gave him neurological tests. What kind of tests are these? How do you test the cranial nerves, the reflexes, and so forth?

A. Well, the cranial nerves are tested depending upon what they subserve. For instance, the first cranial nerve is the sense of smell, so you test them with some object that you can smell. The second has to do with vision, and the third, fourth and sixth with the eye movements, so you test all of these individually. In testing sensation of the body, usually you use a pin. In testing strength you have to rely on the [263] patient. In other words, if you grip or hold his arm up and see how much strength it takes to pull it down, and the same with the legs.

Q. These tests were essentially negative from a neurological viewpoint; is that correct?

A. Yes, sir.

(Testimony of Edward W. Davis.)

Q. Now, Doctor, does your field to a certain extent overlap into orthopedics sometimes?

A. In some instances, yes.

Q. Based on your examination of Mr. Sawson in September of 1955 and his complaints to you, did you form any opinion as to what his main complaint was at that time?

A. Yes, sir; I did. His complaints primarily at that time were of his low back pain, with some radiation into his legs. I felt quite sure that he didn't have a herniated disk; that is, with nerve root compressions, but that he may have suffered some sprain of his low back, and I felt that it was primarily an orthopedic problem rather than a neurological problem.

Q. Did you see Mr. Swanson again, Doctor?

A. I did, yes.

Q. When was that?

A. That was on January 7th, 1957.

Q. Did you conduct another neurological examination? A. Yes, sir. [264]

Q. By the way, before we go into that, did he give you any history as to how he was feeling from the head viewpoint since the time of your first examination? A. At the second examination?

Q. Yes. A. Yes, sir; he did.

Q. What was that, Doctor?

A. This time he had other complaints which he had not had before. He stated that his vision was not as good as it was and that it appeared to be getting worse. He had complained of headaches, and

(Testimony of Edward W. Davis.)

he said that the reason he had not returned to work was that he was unable to get around well.

Q. Before you go any further, Doctor, did he elaborate on that in any way?

A. As far as not getting around?

Q. Yes.

A. Yes, he said that he couldn't get around because something seemed to hold him back, and he couldn't explain this. He said it wasn't pain. For instance, if he went to reach for an object he couldn't quite get it into his hand or grip it because something inside him seemed to hold him. The same with his legs. If he was going to get up out of a chair something seems to hold him down. I think again it was not akin to pain. It was just something that he couldn't explain. [265]

Q. Continue, Doctor.

A. During the examination the patient also volunteered information that his initial legal counsel was crooked, and that a barber at St. Vincent's Hospital—or, rather, he had the impression that a barber at St. Vincent's Hospital was angry with him because he had had his own barber come in and shave him, and he was a little fearful of this man.

Q. What did your examination reveal?

A. Essentially similar findings to that that I found in '55. There was still some tenderness over the back, but no muscle spasm. He was able to flex quite well, and straight leg-raising tests were not limited. The neurological examination was essentially the same except that his generalized weakness,



(Testimony of Edward W. Davis.)

at least to examination, was more marked. In other words, in testing his grip he would not grip with any strength at all. In testing his legs one could hold back, for instance, from either flexing the leg or extending it at the knee with just one finger. You could hold the leg back so that he didn't move it.

Q. Did you form any impression from these tests, Doctor?

A. Yes, I did. It was my impression that this was not organic. In other words, there was no nerve lesion, because if the strength in the man's legs were as little as he showed when under examination he would not be able to walk; he would not have enough to lock his knee, for instance. [266] However, he was able to walk and get about. It was my impression that perhaps this was a voluntary inhibition. In other words, he didn't put forth a maximum amount of effort. There was still nothing to indicate any nerve damage either in the brain or his spinal cord or in the peripheral nerves.

Q. How were the reflexes on the second examination, Doctor?      A. They were quite normal.

Q. Was there any atrophy of the body in any way?      A. No, sir.

Q. By the way, how do you usually get atrophy when a person is hurt? Is it the lack of use of the muscles?

A. There are two types: Lack of use of a muscle will cause some shrinking, or if the nerve is damaged, particularly the peripheral nerve, then the muscle fibers shrink down very rapidly.



(Testimony of Edward W. Davis.)

Q. You didn't find any atrophy of the muscles here?      A. No, sir.

Q. You didn't treat Mr. Swanson in any way, did you, Dr. Davis?      A. No, sir.

Q. Did you come to any conclusion as to whether he sustained any head injury?

A. Yes. Certainly from the history, this man did sustain [267] a head injury. He undoubtedly had a severe concussion and perhaps some contusion of his brain. However, it was my impression initially, after the first examination, that he had recovered remarkably well from this. I could find no definite residuals. Now he had more complaints, which again is somewhat unusual. If I may explain that a little, after a head injury the complaints that they have as far as perhaps memory loss or visual changes or headaches are usually most apparent right at first and in the ensuing few months. They ordinarily don't subside over a period of time and then some months or years later get worse. It ordinarily doesn't take that course. When I first saw him, he had very little complaint referable to his head injury. He had had some headaches, but he thought that otherwise things were pretty good, and it was all at that time his back. Yet when I saw him the next time a year or so later, he then was complaining of these other things; visual disturbance, headache, and so on.

Q. You say that is not usually the pattern that is followed in a head injury?

(Testimony of Edward W. Davis.)

A. No, sir. Ordinarily they will be worse at first and gradually improve.

Mr. Roberts: I think that is all. [268]

### Cross-Examination

By Mr. Morrison:

Q. Doctor, the first time you examined him was in 1955, was it not?

A. That is correct; yes, sir.

Q. The next time you examined him was just a few weeks ago, was it not?      A. Yes, sir.

Q. Now, when you examined him the last time did he tell you that he had to go back to the hospital in December of 1955, and they operated on his brain again?      A. He didn't tell me that, but——

Q. He didn't tell you that?

A. No, sir; but I understand——

Q. When you saw him a couple of weeks ago, didn't you inquire then about what his condition was following through from the first time you examined him in '55?

A. Yes, I asked him what his symptomatology was.

Q. And he never told you that since the last time you had examined him he had been operated on again?      A. No, sir; I don't believe so.

Q. When did you first see the hospital records?

A. Just a few minutes ago.

Q. Just a few minutes ago. In other words, you

(Testimony of Edward W. Davis.)

didn't have these hospital records available to you when you made [269] your examination?

A. No, that is correct. I had some information concerning them.

Q. Wouldn't you think it rather strange that he would not tell you when you examined him two or three weeks ago about this other ordeal he went through when he had these holes bored again in his head? A. No, I wouldn't think so.

Q. You wouldn't think that was unusual?

A. I didn't ask him specifically about it. I was interested only in what his progress had been as far as his general physical status was concerned.

Q. And in this progress he never told you about this bad reaction he had, where he was taken again to the hospital and reoperated on?

A. I don't think there was any bad reaction, was there?

Q. I would think that there would be a bad reaction, when a neurosurgeon would call him in and rebore those holes. I wouldn't think he would do that unless there was a pretty bad reaction, would you?

A. Well, of course, as I say, I know what the circumstances were and I know why the holes were rebored.

Q. You didn't know it, though, at the time you talked to him two or three weeks ago, that they were rebored?

A. Yes, I think that I had that information. Let me just [270] look here.

(Testimony of Edward W. Davis.)

Mr. Roberts: Your Honor, when I asked him for the second examination, I think I advised the doctor as to that.

The Witness: That is correct.

Mr. Morrison: I am asking about that the patient never advised you of that?

A. No, and I didn't ask him the specific question.

Q. And you didn't ask him how he got along after that second operation?

A. I asked him how he got along in general since I had seen him.

Q. Now, Doctor, speaking now about the last time you examined him two or three weeks ago, how long did that examination take you, approximately?

A. Oh, I would say 45 minutes or an hour.

Q. Did you talk to him quite a little bit during that examination?      A. Yes, sir.

Q. Did his conversation make sense to you?

A. No, I felt that the man had a psychiatric difficulty which I noted at that time. In fact, in my recommendation after the last examination, if I may read to you——

Q. No, I am not asking you about that, what you wrote to your company. I am asking you what your reaction was to [271] him.

A. Yes, I thought he was psychiatrically upset.

Q. You didn't think he was normal, did you, when he was in there a couple of weeks ago, normal mentally?      A. From a mental standpoint, no.

(Testimony of Edward W. Davis.)

Q. From a mental standpoint it was your conclusion he was not normal a couple of weeks ago?

A. That is correct.

Q. And you had no information, did you, that prior to this initial accident or the second operation that he ever evidenced these abnormal tendencies or mental tendencies, did you?

A. Yes, I think that was one reason that he had the second operation, because he was showing abnormal mental reactions.

Q. I didn't make myself clear. Before the original accident you had no history that he showed these tendencies, did you?      A. No, sir.

Q. You didn't know until you saw the records today that this man was unconscious for eight days following the original accident, did you?

A. Yes, sir. Yes, in his initial history he told me that he had been unconscious for a period of one week, approximately one week. That was the basis of my impression that [272] he did suffer a moderately severe head injury.

Q. But you didn't know until you saw the hospital records today, did you, that there was a marked swelling of the brain found on that first operation?

A. Yes, I had been informed of that previously in the information that I had prior to the time that I saw him.

Q. That was furnished, no doubt, by counsel?

A. Yes, sir. Of course, the swelling that he had would be quite consistent with the amount of head injury he sustained.



(Testimony of Edward W. Davis.)

Q. Now, when you examined him two weeks ago do your records that you have with you there show a negative Hoffman test? A. They do.

Q. You have that written down there, have you?

A. Not specifically, but I have that he had no neurological changes.

Q. Yes. You don't have written in your records there that he had a negative Hoffman test?

A. No. Ordinarily in doing a neurological examination I don't write down in my notes every negative finding of every test that I do. It would be practically impossible.

Q. Did you make a Babinski test on him two weeks ago? A. Yes, sir; and it was negative.

Q. Does your record show that that was negative or normal? [273]

A. He had no pathological reflexes. Both the Hoffman and the Babinski are pathological reflexes.

Q. I am not trying to make any comparisons between your testimony and some other doctor's, but Dr. Kloos testified the other day and stated that the day before he examined him and found a positive Babinski bilaterally and a positive Hoffman on the left side. Would it be unusual for that to happen? Could that come on in that interval between your examination and his?

A. It is not unusual for those reflexes to change. But was the positive Babinski found recently or at the time that he was in the hospital after the injury?

Q. Yes, he found a positive Babinski here on his



(Testimony of Edward W. Davis.)

examination last week bilaterally and a positive Hoffman on the left side.

Mr. Roberts: Your Honor, I don't know whether Mr. Morrison is misquoting the evidence, but I don't remember such testimony. I have an idea he said there was no positive Babinski and there was a very slight indication of a positive test on the left side.

Mr. Morrison: The records show that every time he examined him at all times he treated him he had a positive Babinski, and when he examined him the other day it was more marked and bilateral, on both sides. The Hoffman was on the left side. The record will show that. [274]

The Witness: Well, I didn't find either.

Q. Now, Doctor, the testimony in here is that these personality changes developed after the second operation; that following the second operation he became belligerent.

Mr. Roberts: Your Honor, I think again Mr. Morrison is misquoting the record. The hospital records are in here. They are admitted into evidence, and they show that the man was very belligerent at the time of the first admission to the hospital, and they show that he was belligerent at other times in the hospital.

Mr. Morrison: I am talking about these other tendencies. The records will show that they developed after the second operation.

Mr. Roberts: What tendencies?

Mr. Morrison: The tendencies about the barber and the persecution complex.

Mr. Roberts: The hospital records speak for

(Testimony of Edward W. Davis.)

themselves, your Honor, and I think it is all in there. It is exactly the same pattern and story from the beginning.

The Witness: Actually, unless I am mistaken, the second operation consisted of very little; merely opening the holes and looking, which is of essentially no significance. I mean that is very minor.

Q. (By Mr. Morrison): That is right, but following that, for instance, he thought a little barber over there was going [275] to cut his throat?

A. Yes, he told me about that.

Q. And the evidence is that he is suspicious of people. For instance, the evidence is he is suspicious of his union representatives that have been trying to help him. He is even suspicious of me. I am his second lawyer. I am not his first.

The Witness: No, I understood that he had had trouble with his first lawyer.

Q. Of course, that is not normal, is it, Doctor?

A. No, that is a very definite paranoid tendency.

The Court: You were up there, and you thought that little barber had a shaky hand, I remember.

Mr. Morrison: That is true, your Honor. But he was so small I wasn't afraid of him. He did appear a little shaky.

The Witness: I would certainly agree that he shows paranoid tendencies, a schizophrenic type of reaction. With a head injury a schizophrenic reaction is not usual. I would suspect that he had this trend prior to his injury. In other words, if we were

(Testimony of Edward W. Davis.)

able to get a good injury of him in the past, I think he would have shown a schizoid trend.

Q. Don't you think that it has given us an opportunity to get a pretty good history from people that have been [276] associated with him in the past?

A. I can't say, sir.

Q. They have not brought anything in here.

A. But in general a head injury produces memory disturbances and personality change, but not a schizoid type of reaction, what is termed a psychotic reaction. Ordinarily head injuries do not produce a psychosis.

Q. Didn't he tell you that he has trouble with his memory?

A. The first time that I saw him——

Q. No, no, I am talking about——

A. He said he had gotten all over it.

Q. The second time didn't he tell you he had had trouble with his memory?

A. Yes.

Q. Did he tell you that he has to write things down carries a book around with him and writes even any appointments or anything, he writes it down? Did you notice that?

A. Yes, and again, you see, that is what bothers me about this man. That is not according to what one would expect with a head injury. The memory is worse at first and then it gets better.

Q. Let's assume, Doctor, that there have been a number of people in here that associated with this man before this accident occurred, and that he was

(Testimony of Edward W. Davis.)

a jovial person at that time, that he was a hard worker and, as one person said, he [277] was a good neighbor, and he never had any gripes against any person. These people worked with him for years up until the time of the accident. Now, assuming that to be true, because there is no evidence in here to the contrary, wouldn't you think that this accident had something to do with this change?

A. You would have no other choice.

Mr. Morrison: No other choice. I think that is all, Doctor.

#### Redirect Examination

By Mr. Roberts:

Q. Just one more question, Doctor: Just summarizing your evidence, your examinations the first time and the second time from a neurological viewpoint, all the tests that you neurosurgeons give were essentially negative as far as Mr. Swanson was concerned; is that correct? A. Yes, sir.

Mr. Roberts: Thank you, Doctor.

(Witness excused.) [278]

JOHN L. MARXER

was produced as a witness in behalf of the Defendants and Third Party Plaintiffs and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Roberts:

Q. Doctor, would you state your full name, please? A. John L. Marxer.

Q. Your occupation?

A. Orthopedic surgeon.

Q. Doctor, will you give us your background, your training and experience and where you graduated from?

A. I graduated from Creighton University in 1930. I interned first at St. Vincent's Hospital in Portland here until June of 1931, and then I went to Bellevue Hospital in New York City, and then followed with a residency at the Cumberland Street Hospital in Brooklyn, New York, which I finished in the first of the year 1933. I came back and practiced in general practice until 1940. Then I went to the University of Iowa, the Department of Orthopedic Surgery, where I remained for the next three and a half years. I started practicing orthopedic surgery as a specialty in 1944 in Portland, Oregon, and I have been practicing that specialty since that time.

Q. Are you associated in the practice of Medicine with [279] anyone, Doctor?

A. Yes, I am. There are three of us. There is Dr.

(Testimony of John L. Marxer.)

W. H. Clarke and Dr. John Harder, all orthopedic surgeons.

Q. Doctor, I understand you have a substantial practice through the Industrial Accident Commission in orthopedic work?

A. Yes. Most orthopedists do.

Q. Doctor, to what societies do you belong?

A. I am first a member of the Multnomah County Society, the Portland Academy of Medicine, the American College of Surgeons, the International College of Surgeons, the American Board of Orthopedic Surgery and the American Academy of Orthopedic Surgery.

Q. Those are two orthopedic honoraries?

A. That is right.

Q. Doctor, what hospitals are you a member of?

A. I am a member of St. Vincent's Hospital, Providence Hospital and Holladay Park.

Q. Do you have any connection with the University of Oregon Medical School?      A. I do.

Q. What is your connection there?

A. I am teaching in the Crippled Children's Division.

Q. In what?

A. The Crippled Children's Division. [280]

Q. Is that at Doernbecher?

A. No, that is in the University proper. They have their own building there actually, but it is not in pediatrics. It primarily has to do with orthopedic problems.

Q. Orthopedic problems with crippled children?



(Testimony of John L. Marxer.)

A. With children, yes. "Children" actually goes up to 20 years old.

Q. Now, Doctor, did you at my request make medical examinations of Mr. Guy W. Swanson?

A. I did.

Q. When was the first examination that you made?

A. The first examination was made on May 9th, 1956.

Q. May 9th, 1956?                      A. That is right.

Q. What history did Mr. Swanson give you as to his particular complaints at that time?

A. He stated that on February 9th, 1955, he was working as a longshoreman, covering up a hatch, and states that he stepped into the hatch cover and from that time on he does not remember anything. The patient states that he has been informed that his head hit a beam and he went down into the lower part of the hatch. At any rate, he states he was unconscious, and actually does not remember anything for days. He was first treated by Dr. Ed Kloos, who apparently did surgical exploration on his head. He states as far as [281] his back is concerned that it bothered him in the hospital when he was there the first time, and because of this he was cared for by Dr. Howard Cherry. After the examination, however, no definite treatment was given for his back. The patient states that his back pain is present both night and day. He describes the pain as being of a steady ache in character. He states that he practices bending every day. He bends and

(Testimony of John L. Marxer.)

moves around very slowly and deliberately, however. He had pain from his hips down to his feet, and he states he has an abnormal sensation on the bottoms of his feet. Coughing or sneezing does not affect the condition. He sleeps fairly well. He states that he sleeps some in the daytime, and then again he will sleep some at night, but every time he wakes up he has pain in his back and sometimes has to lie on his stomach for relief. He doesn't notice any difference in the weather; either winter, summer, rain or shine.

His past history was essentially negative, and the history by systems was negative, except as far as the upper extremities were concerned he states he has no strength in his arms, but there is no pain. The pain is all located in his legs and back.

Q. What did your examination reveal, Dr. Marxer?

A. Well, the patient is a strongly built male, weighing 200 pounds, and is 5 feet 10 inches tall. The pupils are [282] equal and oval and react to light and accommodation. He was able to wrinkle his forehead, draw up the corners of his mouth and protrude the tongue in the midline. He has a full upper and lower plate. The patient is able to hear the whispered voice at a distance of 20 inches. He states the sore spot seems to be in the lower dorsal spine area, which is actually beginning just below the mid-back. The general outline of his back is satisfactory. He has a tendency, however, to carry his shoulders slightly forward.

## (Testimony of John L. Marxer.)

The reflexes of the upper extremities are negative, except that the Hoffman test was positive on the left. On forward flexion he bends very slowly and states that he has pain when he bends down probably 50 per cent in the region of his right buttocks. Backward extension he bends as a rod. He states that it bothers his legs. Side bending, he doesn't bend, but he just swishes from one side to the other. The Romberg test was negative.

The knee jerks and ankle jerks were present and actually hyperactive. Plantar irritation gives a flexory response. Sensation to pin prick is normal and equal in both lower extremities, and also light touch. The patient states it does not feel like it used to. He sits on the edge of the table and completely extends his legs and states he has pain in his back.

Now, single leg-raising test on the right, he [283] raises it just about 20 degrees and then states it bothers him. On the left he can raise it up about 60 degrees and then it begins to bother him in his back, and he grunts with pain. Double leg-raising test even passively can only come up about 10 degrees, and it hurts him across his low back. Holding his knees together gives him pain in his back, but bending his ankles does not. Patrick's test on the left, the patient states he gets pain all across his low back, and on the right he gets pain across his low back, and states it starts in the center. The Gaenslen test was negative on the left, and on the right it bothers him over his low back. He has no

(Testimony of John L. Marxer.)

discomfort in the dorsal spine on doing any of these tests. With the patient lying on his abdomen and placing or, rather, just bending his knees gives him pain, he states, in his lumbar spine segment diffusely. Also placing the legs in a position of hyperextension—that is, in lifting the legs off of the table—and without maintaining that position he states gives him pain, diffuse, in the lumbar spine. He is hyperventilating at this time and breathing rather rapidly.

Q. Did you take any X-rays, Doctor?

A. We did.

Q. What did the X-rays reveal?

A. He had minimal arthritic changes in the region from [284] the sixth dorsal vertebra to the ninth dorsal vertebra, inclusive. This is very minimal. X-rays of the lumbar spine showed some narrowing of the facets between L-4 and L-5. That is in the low back. There is a transitional type vertebra of L-5, with an articulation between the transverse process and the sacrum on the right, and what appears to be a spina bifida on the fifth lumbar segment. The lateral view shows normal appearance of outline of the vertebral segments, with the most prominent arthritic spur between D-12 and L-1. There is some horizontality of the sacrum.

Q. Doctor, did the X-rays reveal any fracture or anything of that nature in the back?

A. They did not.

Q. Was the X-ray evidence essentially of an arthritic nature?           A. Yes, it was.

(Testimony of John L. Marxer.)

Q. Doctor, you mentioned three tests. The Hoffman test, I was wondering what that kind of test is?

A. Well, that is a test whereby we snap one of the fingers, usually the index finger, and the thumb comes up in an extended position.

Q. How about the Romberg test?

A. The Romberg was negative.

Q. What kind of a test is that? [285]

A. The Romberg test is a test for one of the lateral columns of the spinal cord. It means that they don't have co-ordination.

Q. That was negative?

A. That was normal.

Q. The last one was the Gaenslen test.

A. That is a test for the low back.

Q. That was negative, too?

A. Yes, it was negative, except on the right it bothered him diffusely over his low back.

Q. Would you tell me about the Hoffman test again. You say that was positive?

A. It was positive on the left.

Q. What does that mean? Will you demonstrate that, Doctor?

A. The test?

Q. Yes.

A. Well, the test is you snap a finger and the thumb just comes up in this position.

Q. I see. It was positive on one side?

A. It was positive on the left.

Q. At that time did you come to any impression or conclusion as to Mr. Swanson's condition?

A. Yes. I believe that this patient, from an



(Testimony of John L. Marxer.)

orthopedic point of view, has symptoms that are markedly exaggerated and way out of proportion to his findings. Actually, one [286] would say that his findings are normal for a man of his age and build, and with these varied and severe complaints one has to think of a psychopathic state. I do not believe that his symptoms today are primarily orthopedic in nature.

Q. Doctor, did you know at the time you made that examination in 1956 whether Mr. Swanson had recently, in January of that year, had a second operation to his head?

A. Yes, I did know that, in that he stated that the last time he was in the hospital in the history—I didn't know the date. At least, I didn't record the date.

Q. Dr. Marxer, did you see Mr. Swanson again at my request?      A. I did.

Q. When was that?

A. I saw him again on January 9th, 1957.

Q. Leaving out the history, did he give you any different history this time or any different complaints that you know of from the time you first saw him?

A. Yes. He stated that since he was last examined he has started to lose his voice. Actually, the articulation relative to his voice seemed satisfactory. In other words, he articulated satisfactorily, but he states that he talks much more quietly now than he did previously. This has just occurred since he came out of the hospital the second time. The patient states that he was in the hospital the



(Testimony of John L. Marxer.)

second [287] time in January of 1956. He stated he was at St. Vincent's Hospital, and his head was operated on by Dr. Kloos. He states also that his hands, feet and lips have been cold ever since he was in the hospital the first time, which was February 9th, 1955.

Q. Did Mr. Swanson say anything at this time about his back?

A. He states that actually his back still bothers him, and he points to the right upper portion of his abdomen, and this goes right through into his back. Also, just above the symphysis pubis, which is the bony part of the pelvis, anteriorly from that point into his back. He has had no treatment for this condition since he was last seen, but he has had some physical therapy treatments at Providence Hospital under the direction of Dr. Howard Cherry. He doesn't recall when this was, however.

He states that some nights he sleeps pretty good and other nights he can sleep for only four hours and then he is unable to sleep any more. He doesn't actually have any pain, but it is just that he can't do anything about his sleeping. He says that if he lies down he feels much better.

Q. Did you make an examination of him the second time, Doctor?

A. Yes. His weight was the same. The pupils were equal [288] and oval, and they reacted to light and accommodation. The Romberg test was negative, and the other tests were negative as far as

(Testimony of John L. Marxer.)

the upper extremities were concerned. The Hoffman test at this time was negative.

Q. Was it negative on both sides on the second examination?

A. That is right. As far as his back is concerned, he points from approximately the ninth dorsal down to the lumbosacral junction as being the tender area. He stands erect. The crests of the ilium for all practical purposes are of equal height.

When bending forward normally he states he can feel it, but it doesn't hurt him. Bending backward was normal as to range, and he states that it is not painful, but he states that he can feel it. He actually bends somewhat as a rod. Side bending to the right and left is slightly limited, and he complains of pain at the lumbosacral junction. Rotation to the right and the left is normal as to range. This does hurt him, but he states that he can feel something in his low back.

Now, the reflexes of the lower extremities were normal. Actually, the patient doesn't want the bottom of his feet touched because he has always been extremely ticklish there. He actually refused to let me touch the bottom of his feet at that time, so I didn't do it. Sensation to light touch was normal and equal in both lower extremities, [289] and also sensation to pin prick was normal and equal in both lower extremities. The abdominal reflexes seemed to be working satisfactorily. Also, the cremasteric reflexes were satisfactory. In other words, the re-

(Testimony of John L. Marxer.)

flexes were normal. I didn't try for a Babinski at this time.

Q. Did you take any X-rays, Doctor?

A. We did.

Q. What do the X-rays show?

A. They show degenerative arthritic changes noted previously at the lumbo-dorsal junction, and a spina bifida occulta of the fifth lumbar spinous process, the same finding as shown originally.

Q. There was no change as to the arthritic condition?

A. There was no change. The arthritic condition was stationary.

Q. Did you form any impression at that time as to the man's orthopedic difficulties, Doctor?

A. From an orthopedic point of view one would say that there is probably some minimal strain to the lumbosacral junction, which I do not believe would be incapacitating to this person. I felt that he was a psychopathic personality and seemed to be primarily a neurological or psychiatric problem.

Mr. Roberts: Thank you, Doctor. [290]

### Cross-Examination

By Mr. Morrison:

Q. You figure he is a case for treatment by psychiatrists or neurosurgeons now instead of for orthopedic surgery?

A. That is what I thought.

Mr. Morrison: That is all. No further questions.

(Witness excused.)

Mr. Roberts: That is the medical testimony for the defendants, your Honor.

The Court: Do you want to do some briefing?

Mr. Roberts: Your Honor, I would like to take a little time. I should have it ready for you by Thursday or Friday.

The Court: I don't want it so soon. Mr. Morrison is going to want to answer you. You take ten days, Mr. Roberts, and you take ten days, Mr. Morrison, and you take five to reply if you need them. That will leave me a couple of days to read the briefs, and I will hear you in argument on the 11th at 11:00 o'clock in the morning.

(Whereupon proceedings in the above matter were concluded.) [291]

### Reporters' Certificate

We, the undersigned, John S. Beckwith, Official Reporter of the above-entitled Court, and William A. Beam, Official Reporter Pro Tem of the above-entitled Court, do hereby certify that we reported in shorthand the proceedings had in the foregoing matter, that we thereafter caused our respective shorthand notes to be reduced to typewriting under our direction, and that the foregoing transcript, consisting of Pages 1 to 291, both inclusive, constitutes a full, true and accurate transcript of said proceedings, so reported by us in shorthand on the dates set forth in the foregoing transcript, and of the whole thereof; our respective portions being as follows:

Pages 1 to 150—William A. Beam

Pages 151 to 291—John S. Beckwith

Dated at Portland, Oregon, this 22nd day of April, 1957.

/s/ JOHN S. BECKWITH,  
Official Reporter.

/s/ WILLIAM A. BEAM,  
Official Reporter Pro Tem.

[Endorsed]: Filed April 23, 1957.

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[Title of District Court and Cause.]

#### DOCKET ENTRIES

1955

Apr. 27—Filed petition for removal from Multnomah Co.

Apr. 27—Filed bond on removal.

Apr. 27—Filed notice of removal.

Apr. 29—Filed motion for order to bring in 3rd party defts.

Apr. 29—Filed and entered order to bring in 3rd party defts.

Apr. 29—Filed 3rd party complaint.

Apr. 29—Filed motion for order for service by Wm. F. Howell.

Apr. 29—Filed and entered order for service by Wm. F. Howell.

Apr. 29—Mailed summons for service to Wm. F. Howell for 3rd party def. Independent Stevedore Co.



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- Apr. 29—Issued summons on 3rd party def. Portland Stevedoring Co.—to marshal.
- May 2—Filed answer of defts. Matson Navigation Co. and Oceanic Steamship Co.
- May 2—Filed summons for 3rd party def. Portland Stevedoring Co. with marshal's return.
- May 5—Filed and entered order for service by M. F. Kelly.
- May 5—Mailed summons for 3rd party def. Independent Stevedore Co. to M. F. Kelly.
- May 18—Filed motion of 3rd party def. Portland Stevedoring Co. for more definite statement.
- May 19—Filed summons for 3rd party def. Independent Stevedore Co. with return.
- May 20—Filed motion of 3rd party def. Independent Stevedore Co. for more definite statement.
- May 31—Entered order reserving ruling on defts. Portland Stevedoring Co. and Independent Stevedoring Co.'s motions to the time of pretrial conference and order allowing 3rd party defts. 30 days in which to file 3rd party answers.
- June 8—Filed plaintiff's demand for jury trial.
- July 14—Filed deposition of Clarence Uskaski for defendants.
- July 22—Filed deposition of Guy W. Swanson.
- Aug. 2—Filed amended third party complaint.



1955

- Aug. 23—Filed answer of 3rd party defendants to amended 3rd party complaint.
- Oct. 31—Entered order setting for pretrial conference on Dec. 12, 1955.
- Dec. 12—Entered order setting for pretrial conference on Jan. 23, 1956.

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- Jan. 23—Entered order setting for trial on March 5, 1956.
- Jan. 23—Lodged pretrial order.
- Feb. 6—Filed notice of attorney's lien.
- Feb. 15—Entered order striking from trial on March 5, 1956.
- Feb. 27—Filed stipulation.
- Feb. 27—Filed and entered order allowing substitution of attorneys for plaintiff.
- Apr. 3—Filed motion for leave to file amended complaint.
- Apr. 16—Entered order allowing pltf. to file amended complaint.
- Apr. 16—Filed amended complaint.
- Apr. 19—Filed request for jury trial.
- May 10—Filed order allowing motion to file amended complaint.
- Oct. 8—Entered order setting for P.T.C. on Oct. 29, 1956.
- Oct. 29—Record of P.T.C.
- Oct. 29—Entered order setting for trial on Jan. 21, 1957.
- Dec. 13—Filed notice of withdrawal of plaintiff's request for jury trial.

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Dec. 24—Entered order that withdrawal of jury trial by pltf. be continued to date of trial.

Dec. 28—Entered order cancelling trial date of 1-21, and resetting on Feb. 5.

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Jan. 3—Issued 2 subpoenas—8 copies—to deft's. attys.

Feb. 4—Filed petition for issuance of subpoena duces tecum.

Feb. 4—Filed and entered order for issuance of subpoena duces tecum.

Feb. 4—Issued subpoena duces tecum handed to atty. Kenneth Roberts.

Feb. 4—Filed subpoena duces tecum with return on service by Kenneth Roberts.

Feb. 5—Filed and entered pretrial order.

Feb. 5—Record of Court Trial.

Feb. 6—Record of Court Trial.

Feb. 6—Entered order to hear remainder of medical testimony on Feb. 12th at 12:00 noon.

Feb. 6—Entered order allowing defts. to file brief on Feb. 13th and pltffs. to answer.

Feb. 6—Entered order setting for hearing on liability between Mr. Roberts and Mr. Woods on Thursday, Feb. 7th, at 9:30 a.m.

Feb. 7—Record of hearing on oral argument on liability between Matson Navig. Co. vs. Independent Stevedoring Co.

Feb. 7—Filed memo of authorities by Mr. Wood.

Feb. 12—Record of hearing of medical testimony.

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- Feb. 12—Entered order requesting Pltf. to file brief in 10 days. deft. 10 days and 5 days for Reply.
- Feb. 12—Entered order setting for oral argument on Mar. 11th at 11:00 a.m.
- Feb. 25—Filed defts and 3rd pty. plttf's. memo re liability of Oceanic to pltf.
- Feb. 25—Filed defts and 3rd pty plttf's' memo re liability of Stevedoring Companies.
- Mar. 5—Filed pltf's memo re liability of Oceanic Steamship Co.
- Mar. 11—Record of hearing on argument—decision reserved.
- Mar. 14—Filed and entered Findings of Facts and Conclusions of Law awarding plaintiff \$100,000—special damages \$12,053.60.
- Mar. 20—Filed obj. of Oceanic S.S. Co. to Pltfs'. Findings of Fact and Conc. of Law.
- Mar. 21—Entered order setting hearing on objections of Mr. Roberts. Oceanic S.S. Co., for Monday, Mar. 25th at 9:30 a.m.
- Mar. 22—Lodged Proposed Findings of Fact and Conclusions of Law of Oceanic S.S. Co.
- Mar. 25—Filed memorandum re excessiveness of damages.
- Mar. 26—Filed objections of Oceanic S.S. Co. to 3rd party defts. proposed Findings of Fact and Conclusions of Law.
- Mar. 27—Entered order overruling objections of Oceanic S.S. Co. to Pttf's'. Finding of Fact and Conclusion of Law.

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- Mar. 27—Filed and entered Judgment for plttf. and against Oceanic S.S. Co. (10:30 a.m.).
- Mar. 27—Filed and entered 3rd Party Defendants Findings of Fact and Conclusion of Law.
- Mar. 27—Filed and entered Judgment 3rd Party ptffs be non-suited as to 3rd party defds.—3rd party defts. have and recover costs and disbursements from 3rd party ptff. (2:30 p.m.)
- Apr. 1—Filed pltf's cost bill. (Costs taxed at \$87.04).
- Apr. 3—Filed motion to amend pursuant to Rule 5216 and/or for a new trial pursuant to rule 59 of the Federal Rules of Civil Procedure.
- Apr. 15—Filed memo in support of motion to amend Findings and Judgment or in the alternative for a new trial.
- Apr. 18—Record of hearing on motion—under advisement.
- Apr. 23—Filed transcript of proceedings (Feb. 5, 6 & 12, 1957).
- Apr. 23—Filed and entered order overruling motion of defts. Oceanic Steamship Co. to amend Findings of Fact and Alternative motion for a new trial.
- May 21—Filed notice of appeal by Oceanic Steamship Co.
- May 21—Filed bond for costs on appeal.
- May 22—Filed cost bill of 3rd party def. Portland Stevedoring Co.

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- May 22—Filed cost bill of 3rd party def. Independent Stevedore Co.
- May 23—Filed and entered order extending time for appeal 90 days.
- May 24—Costs of Portland Stevedoring Co. taxed at \$20.00.
- May 24—Costs of Independent Stevedoring Co. taxed at \$20.00.
- June 10—Filed stipulation as to record on appeal.
- June 10—Filed motion to transmit exhibits.
- June 10—Filed and entered order directing Clerk to transmit exhibits to Cir. Ct. Appeals.
- June 25—Filed satisfaction of Judgment by plttf.
- June 28—Filed satisfaction of attorneys' lien and release by William B. Murray & Donald R. Stark.
- July 3—Filed motion for order to pay funds out of Reg. of Court.
- July 3—Filed and entered Order that Clerk pay pltf \$90,000.00 out of Registry of Court.
- July 10—Filed receipt of Guy W. Swanson for \$90,000.00
- July 22—Filed statement of points upon which appellant intends to rely on appeal.
- July 22—Filed stipulation with respect to designation of portions of record to be printed.
- July 22—Filed stipulation with respect to printing of record.



[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

United States of America,  
District of Oregon—ss.

I, R. DeMott, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Pretrial order; Findings of fact and conclusions of law; Proposed findings of fact and conclusions of law of Oceanic Steamship Company, etc.; Proposed judgment; Third-party defendants' findings of fact and conclusions of law; Judgment; Judgment; Notice of appeal; Undertaking on appeal; Order extending time to docket appeal; Stipulation as to record; Stipulation re exhibits; Order to forward exhibits to Court of Appeals; Satisfaction of judgment; Stipulation with respect to printing of record; Statement of points upon which appellant intends to rely on appeal; Stipulation with respect to designation of portions of record to be printed on appeal; Transcript of docket entries, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 8074, in which Oceanic Steamship Company is a defendant and third-party plaintiff and appellant, and Independent Stevedore Company and Portland Stevedoring Company are third-party defendants and appellees; that the said record has been prepared by me in accordance with the stipulations of the appellant and appellees, and in accordance with the rules of this court.



I further certify that there is being forwarded under separate cover the reporter's transcript of proceedings. Also plaintiff's exhibits 1, 2-B, 2-C, 2-E, 2-F, 2-G and 4; defendants' 41-A, 41-B, 41-C, 41-D, 45-A, 45-B, 46-A, 46-B and 56.

I further certify that the cost of filing the notice of appeal, \$5.00, has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 6th day of August, 1957.

[Seal]                      R. DE MOTT,  
Clerk.

By /s/ THORA LUND,  
Deputy.

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[Endorsed]: No. 15659. United States Court of Appeals for the Ninth Circuit. Oceanic Steamship Company, a Corporation, Appellant, vs. Guy W. Swanson, Independent Stevedore Company, a Corporation, and Portland Stevedoring Company, a Corporation, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed: August 8, 1957.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.